

SHATRAJ KI BAAZI
MUSLIM WOMEN'S ACTIVISM, THE
PATRIARCHY AND TRIPLE TALAQ IN MODI'S
INDIA

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Plan II Honors

University of Texas at Austin

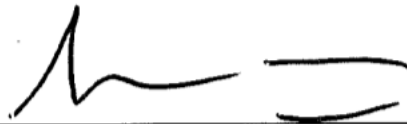
May 15, 2019



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To the *women of Lucknow* who welcomed me into their homes and communities, shared their stories and taught me to understand their perspectives, their hopes and their fears.

* * *

To *my wonderful host mother* in Mahanagar, Simi Ahmad, and her youngest daughters, Asna and Aiman.

* * *

To *my dear friend*, Roushon Talcott, my family, and others who provided intellectual and emotional support throughout this journey.

Abstract

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In August, 2017, the Indian Supreme Court ruled on a landmark case involving one Shayara Bano and four petitioners that instant triple *talaq*, a unique and controversial variation of an Islamic method for declaring divorce, was incompatible with the Indian constitution due to its detrimental effects on Muslim women and its lack of centrality to the religion. Many news and media sources both in India and around the world were quick to report this as a straightforward victory for Muslim women, while the male-dominated Islamic scholarly community expressed disdain at the least and outrage at the most. However, the matter is far more complicated and requires an understanding of history, social structure and political ideologies in India.

The first portion of this paper analyzes the history of State intervention in Muslim personal law from the colonial period onward in an effort to contextualize and critique the current government's actions. It then analyzes and compares the tactics and positions of four Muslim women's activist groups and the one male-dominated group at the forefront of public discourse on instant triple *talaq*, as well as their responses to the Supreme Court judgement and Prime Minister Narendra Modi's subsequent executive order to criminalize the practice. Ultimately, the paper aims to answer the following question: What do these groups approaches to activism and stances on instant triple *talaq* convey about the current state of gender politics in Islamic institutions in India? In the process of providing an answer, the paper also addresses issues such as the relationship between the State and religious minorities, the competing loyalties that face Muslim women, and the inevitable consequences of inviting a Hindu nationalist regime to intervene in a prolonged conflict between Muslim women and the patriarchal forces behind the Islamic institutions.

Table of Contents

Introduction	1
Religion and the State	5
Shatranj Ki Baazi	6
Chapter One: Contextualizing Islamic Scholarship and Muslim Personal Law in India	8
Understanding Muslim Personal Law in India	8
Effects of British Colonial Rule on Personal Law	18
Timeline of State Intervention in Muslim Personal Law	24
Muslims in Modi's India	31
Chapter Two: Muslim Women and the Muslim Patriarchy	38
The All India Muslim Personal Law Board	39
Bazm-e-Khavateen	40
The All India Muslim Women's Personal Law Board	43
Bharatiya Muslim Mahila Andolan	44
Nida Khan et. al	46
Gender-Just Nikahnamas	49
Geopolitical Considerations	52
Chapter Three: The Shayara Bano Decision	57
2016-2017 Catalyzing the Movement	58
The Official Judgement	60
Parliament and Modi	64
Conclusion	67
Further Research	72
Bibliography	74
About the Author	80

Introduction

On August 25th, 2017 I was sinking into a stiff airplane seat, sighing with the deepest feeling of relief as I'd just managed to catch the absolute last flight leaving the city of Houston for the next four days. I had raced through the beginning of what would soon be known as the most disastrous hurricane to ever strike the city so that I could make it to Delhi in time to meet my professor and other classmates. Truly, it was the most dramatic attempt to catch a flight I'd ever been through. The second I clicked my seatbelt in that god-awful middle seat on the plane my phone buzzed in my back pocket—and buzzed, and buzzed. Scrambling to check my notifications I found layers of headlines that read something like “Victory for Muslim women: “Indian Supreme Court bans triple *talaq*” or, “India bans Islamic form of divorce.” It was in this serendipitous moment that I realized what the topic of my undergraduate thesis would be.

Interestingly, after my first few months in Lucknow I realized that so many of the Muslim men and women of different classes that I came to know were hardly concerned about *instant* triple *talaq* (a more proper way of referring to the practice), but rather they were concerned about the context in which the Supreme Court decision and consequential legislation were made. In the years since Narendra Modi, leader of the Bharatiya Janata Party (BJP), became Prime Minister, the practice of instant triple *talaq* has become extremely politicized, drawing attention from news sources all over the world. Of course, that is not to say that there was not a significant effort coming from Muslim women to have the practice banned, but as I will discuss later, their approaches to activism were quite splintered.

In 2017, when the Supreme Court decided that the practice of instant triple *talaq* should be banned, tensions between Hindus and Muslims were at a high due primarily to the strengthening of the nationalist Hindutva movement fostered by the BJP's rise in popularity from the late 1980's, which has driven an increase in heinous acts of violence and discrimination targeted at Muslim communities. Muslims were, and still are, dramatically underrepresented in governing bodies at the State and national level, especially within the BJP. In 2014, when the BJP took over Parliament and Modi became PM, the party had backed only 7 Muslims out of 482 MP candidates, none of whom were elected, and Muslim representation in Parliament dropped to a mere 4%—the lowest in nearly 60 years.¹ In the 2017 Assembly elections in Uttar Pradesh (UP), the country's most populated state, Muslims accounted for 19.2% of the population, about 43 million people or the size of Argentina.² Yet they were represented by only 5.9% of the UP Assembly where the BJP took 312 of 403 seats without backing a single Muslim candidate. Nationwide, Muslims accounted for 14.2% of the population, yet only 0.28% of the Members of the Legislative Assembly (four out of 1418) were Muslim.³ To further contextualize this, the 2011 Indian census reported that Muslims make up more than 172 million of India's then 1.2 billion population, making it the third largest Muslim population in the world, and a large minority in the country.⁴

¹ Mannathukkaren, Nissim. "The Fast Disappearing Muslim in the Indian Republic." The Indian Express. January 22, 2018. <https://indianexpress.com/article/opinion/the-fast-disappearing-muslim-in-the-indian-republic-bjp-mla-hindu-saffron-religion-5034205/>.

² Mannathukkaren, Nissim. "The Fast Disappearing Muslim in the Indian Republic"

³ Mannathukkaren, Nissim. "The Fast Disappearing Muslim in the Indian Republic"

⁴ "Religion Census 2011." Religion Data - Population of Hindu / Muslim / Sikh / Christian - Census 2011 India. <https://www.census2011.co.in/religion.php>.

Given this data, it is important to note that it was shortly after the rise of Modi and the BJP that instant triple *talaq* became an important political issue, rather than a topic of controversy that was mostly confined to internal discourse of the Muslim community. There had long been individuals or organizations that stood against the practice, especially from within the Muslim community, but it was rather uncommon to find this at the center of debates on prime time news, or as at the center of prominent political and activist campaigns. There had been films such as B.R. Chopra's *Nikaah* in 1986 and the infamous Shah Bano controversy in the mid-80's, which drew attention to the contention between personal and State laws, causing a similar discord among Muslim activists. The issue of Muslim personal law, specifically family law, conflicting with State laws had been an important topic of public debate since the colonial period with landmark Supreme Court decisions and legislation that affected maintenance laws and other matters related to divorce. However, the politicizing of instant triple *talaq* is unique largely due to the context in which the Supreme Court ruled to ban the practice, and later legislation criminalized it in the face of a diverse array of female Muslim activist groups and male-dominated organizations. Among these entities are the All India Muslim Personal Law Board (AIMPLB), the All India Muslim Women's Personal Law Board (AIMWPLB), Jamaat-e-Islami Hind (hereon after referred to as Jamaat), Bazm-e-Khavateen, and the Bhartiya Muslim Mahila Andolan (BMMA). As each of these organizations have played key roles in either the history of debates over the adjudication of Muslim personal law in India and/or have recently become central to the debates over instant triple *talaq*, their ideologies and approaches to activism will be analyzed and discussed in this paper.

Thus, the focus of this paper will not be the content of the legislation or an analysis of the practice of triple *talaq* as one might expect. Instead, this paper will take an analytical approach to the public statements and activism of the prominent Muslim-led organizations at the center of the debates concerning the practice. Ultimately, this is an inquiry to the question: What do these five groups' methods of activism convey about the gender politics in the Indian Muslim community today?

In order to properly address the question, the paper has been divided into three chapters. The first is an assessment of the history of the controversies and landmark legislation and Supreme Court cases regarding the adjudication of Muslim personal law beginning with the colonial period, preceded by a brief explanation of what Muslim personal law, or the Shariat, is and how it has operated in India. This chapter will also include a short, although crucial, depiction of the humanitarian conflicts that Indian Muslims have been facing in the last twenty years. This is crucial to understanding the controversy surrounding instant triple *talaq* and the socio-political environment of India today. The second chapter will further analyze the aforementioned key figures' ideologies and approaches to activism noting any shifts over time. In the third chapter I will provide a timeline of the published work and statements from the five organizations' campaigns leading up to the 2017 Supreme Court decision, accompanied by a more comprehensive analysis of each group's arguments for or against the practice itself and the government's involvement. Lastly, this chapter will discuss the crucial pieces of legislation that succeeded the 2017 landmark decision. A significant portion of the primary sources for the research comes from broadcasted interviews, speeches, press releases and online news articles and op-ed's, some of which were originally in Urdu or Hindustani of which the quotes cited were translated by me. These primary sources will

range from the era of the Shah Bano case of 1985, then skip to more immediately relevant publications from 2014 onward, to present day. The primary texts will serve as indications and implications of any shifts in ideologies or public opinion within the main organizations.



Religion and the State

Commonly known as the largest democracy in the world, India is a vastly diverse nation rich in histories, cultures, religions, traditions and mythologies that have clashed, coexisted and contradicted one another across hundreds of empires and dynasties that have thrived and perished. Today it is considered the largest democracy in world; a democratic nation that is comprised of twenty-nine states, seven union territories, twenty-two major languages, thirteen different scripts and more than seven hundred dialects. There are also nine major religions and countless forms of spirituality practiced in this subcontinent that transcend political borders. This not only causes for uniquely complex and varying social structures, but a substantial challenge to the democratic system as well.

A land with such a wealth of diversity as India also suffers from a wealth of sectarian conflicts. Prior to the period of European colonization in South Asia, there was no singular or centralized body of government. During the colonial era there were attempts to categorize, distinguish and define the various ethno-religious and religious groups and their sects in an effort to effectively govern the many peoples of South Asia. Today, in the post-independence period, the Indian Constitution provides certain legal ramifications to accommodate various customs that potentially conflict with State-mandated codes and regulations, including the allowance for the adjudication of personal law under specific circumstances. Here is where

the question that is quintessential to the issue of instant triple *talaq* in India lies: to what extent can a power that claims to be democratic accommodate for or intervene in unique laws and customs that are tied to particular religious communities?



Shatranj Ki Baazi (The Game of Chess)

Shatranj ki baazi, or chess, has been a popular game in India for centuries, and I find it to be a suitable metaphor for the predicament in which Indian Muslim women find themselves, at a time where the dual nature of their identities are pitted against one another. In this metaphorical game of chess, picture an uneven playing field. On one side there is a Muslim woman and across from her sit her two opponents, the *ulema* (the Islamic scholarly community) and the State, both of which are historically strong patriarchal forces. Although the State and the Islamic scholarly community are enemies, their patriarchal values have placed them on the same side of the chess board in this metaphor.

Historically, as the next chapter will discuss in detail, the *ulema* and the State have been pitted against one another, but their tactics often leave Muslim women caught in the cross fires. Under the current Hindu nationalist regime, the *ulema* is challenged with protecting the core exoteric aspects of Muslim identity, one of those being personal law. As Muslim women are up against these two patriarchal forces that have a history of taking advantage of them for the sake of advancing their separate agendas, they—Muslim women—have been attempting to assert themselves in this male-dominated and often misogynist minefield, or in this case, a chess board, to achieve the rights and protections they deserve. Essentially, Muslim women

have been attempting to interrupt the feud between the State and the *ulema* for the sake of their own wellbeing, but are challenged by the need to navigate two competing loyalties.

On every chessboard there are two axes; the vertical one is called the file and the horizontal one is the rank. The rank in this imaginary game is symbolic of the obstacles and barriers imposed by the State to which the women's nationality is clearly tied while the file is symbolic of those imposed by the *ulema*, a major source of authority in the Muslim community to which their religious identity is tied. Every move that women make in this game of *shatranj* is likely to be a compromise on one axis, yet a gain on the other. Sacrifices, compromises and an array of bold decisions are made. Different groups of women, perhaps different generations, different classes and different subcultures may hold conflicting opinions and ideas about which move to make. However, what has happened in the case of instant triple *talaq* in Modi's India, is quite unique. Muslim women who have been partial to defending and reforming Muslim personal law from within a religious framework (Bazm-e-Khavateen and the All India Muslim Personal Law Board), and Muslim women who have been more inclined to support a State whose power extends beyond the adjudicators of Muslim personal law (Bharatiya Muslim Mahila Andolan and Nida Khan) have come together. These women have united despite their differences to disrupt the patriarchal forces that have stood in the way of their justice. They have prevailed in this game of strategy in which sacrifice and compromise are necessary in order to win.

CONTEXTUALIZING ISLAMIC SCHOLARSHIP AND MUSLIM PERSONAL LAW IN INDIA

Chapter One

This chapter will provide expository information on the origin and function of Muslim personal law, and how it has developed in India from the precolonial period and beyond. It will explain the complexities and irregularities of customs and adjudication of Muslim personal law due to the historical plurality of Indian societies. Lastly, it will analyze the impact of the British colonization of India on this plurality and Muslim cultures and personal laws, and describe the discrimination and violence Muslim are faced with under a *Hindutva* (Hindu-nationalist) prime minister.



Understanding Muslim Personal Law in India

Contrary to the popular opinion of Western media and governments, the large canon of Islamic law that contains personal law is not comparable to the sets of laws that govern nation-states, though it can be used to influence them. In those contexts, laws are created and developed by a small group of people with various educational backgrounds and certifications, who seek to create solutions for the mundane problems they witness in society. Islamic law, on the other hand, is not created entirely by man. It is complex, varying among multiple schools of law (Hanafi, Maliki, Hanbali, and more for Sunnis), from various regions and sects (Sunni, Shia, Ismaili, etc.). It is a system of regulations and guidelines largely derived from those established in the Qur'an, which is believed to be the direct word of God. In addition to this text, elements of Islamic law are also derived from the *Sunna*, which is best described as concrete examples of how the Prophet Muhammad lived his life. These

examples are extracted from the *hadith*, which are reports from eyewitnesses of the Prophet's actions and sayings. These are the two main sources of Islamic law, but there is a slew of other factors that play into development of this system of guidelines that requires a network of individuals who perform specific roles in the process of studying and interpreting texts, as well as analyzing and comparing the events, contexts and actions of the Prophet and the early caliphs. Among those individuals are jurists, *qazis*, *muftis*, and scholars who make up the *ulema*.

Prior to the colonial period and the transition to being a nation-state, many Muslim communities operated under the guidance of these individuals. Matters that required some level of officiation or witness were often handled by the *qazis* who served as judges officiating marriages and notarizing contracts. The *mufti* in a community served as a “private legal specialist who was legally and morally responsible for the society in which he lived, not the ruler and his interests.”⁵ He also would issue *fatwas*, which are non-binding suggestions to individuals, groups, or the society as a whole. These men were seen as high authority figures serving in the courts of the emperors and rulers to offer their advice. The jurists were renowned scholars who had superior understandings of the *hadiths*, Sunna, Qur'an and thus were most capable of practicing *ijtihad* and *qiyas*. The first practice—*ijtihad*—is the process of interpreting and rationalizing the law using the sources of Islamic law while the second consists of using analogies to determine the appropriate response or action in a given context or situation. The structure of this system and network allow for adaptation of the laws provided by the Qur'an and Sunna to new and changing societies and technologies, but also allows for a vast range of differences in interpretation and understanding of the laws. These

⁵ Hallaq, Wael B. “The Law in the Age of Nation-states” in *Introduction to Islamic Law*. Cambridge University Press, 2009, 9.

various understandings are published in volumes of *fiqh* (jurisprudence), and while scholars and jurists of one school of law can publish various *fiqh* doctrines, the content of *fiqh* varies the most between the different schools.

It is important to consider all of this in the context of precolonial India. There were, and in many ways still are, very pluralistic societies under the multiple empires that simultaneously governed the region. Although this system of operating personal law was present in Muslim communities, it was often influenced by the cultures and traditions in its midst. As Mengia Tschalaer points out, Muslims in pre-colonial India were by no means uniform in their practices. Some Muslims were known to refer to *Smirti* law⁶ for matters of inheritance; some blended local and regional traditions and practices with those of Islamic importance.⁷ Furthermore, the very structure of the development of the Shariat was nonuniform in that it largely relies on interpretations, and leadership that is localized rather than centralized so that there is no “coherent Islamic framework.” Tschaler explains in detail:

“the laws that developed in various parts of Muslim India differ greatly in terms of their textual sources, mod of interpretation (*ijtihad*), and manners of adjudication. In fact, the boundaries between the equally diverse Hindu laws and Muslim laws were at time fluid, or, ‘fuzzy’ as Kaviraj, (1992, 20—1) terms it. For example, there were instances where converted Muslims followed their earlier non-Islamic customs and practices (for example, joint family property system of coparcenary), and some Muslim community, such as Khojars, the Sunni Bhora, and Molesalam Girasias were governed by the Hindu law so far as inheritance and succession were concerned (Fyzee 1964, 63).”⁸

⁶ *Smriti* or *Manu-Smriti* (lit. “the laws of Manu”) is traditionally considered the most authoritative code of Hindu personal law.

⁷ Tschalaer, Mengia Hong. *Muslim Women’s Quest for Justice: Gender, Law and Activism in India*. Cambridge University Press, 2017, 12.

⁸ Tschalaer, *Muslim Women’s Quest for Justice*, 5.

Thus, Islamic law is unlike any written and discrete codes or laws that are accompanied by methods of enforcement, but rather an abstract concept. Grounded in this system one can find an often complex, and sometimes conflicting, guide to being a proper or successful Muslim and forming a successful Muslim society. There are variations in jurisprudence given at different times and places, and there are certainly variations in what is actually practiced as Muslim communities around the world have been and are still influenced by surrounding cultures, changes in technology and most notably by the colonialism and the subsequent development of the independent nation-state.

Regarding classical jurisprudence on marriage and dissolution of marriage, the five main schools of thought—Hanafi, Hanbali, Maliki, Shafi'i and Jafari'—differ on some details, yet the Jafari' Shia school strictly rejects instant triple *talaq*. The Hanafi law is the primary school upheld in South Asia, thus this essay will mainly focus on the laws and practices of that school. Marriage is viewed as a contractual agreement in Hanafi law, and this contract is called a *nikahnama*. Under most circumstances when the bride has yet to reach maturity, this contract requires a witness (normally male although sometimes a female witness is allowed). A dower, or *maher*—a sum of money or gift from the groom to the bride—is also required and cannot be revoked at any time; it is to remain fully in the possession of the wife. Like any contract, one can attach stipulations that serve as protections of an individual's interests or to set the standards and ramifications of the agreement. Though it is not the sole purpose, for women this can be used as a tool to insert certain protections against abuse or unjust treatment by her husband. These can include a range of demands from the couple not moving too far from the wife's family home to “financial penalties”; for example, a woman can demand a higher dower if the man has another wife already or wishes to marry again in

the future. Unfortunately, as Kecia Ali puts it, “the enforceability of stipulations is fickle and varying” and Maliki, Hanafi and Shafi’i jurists reject any stipulations that bind husbands to monogamy or non-relocation.⁹ Muslim women entering marriages in South Asia and many other parts of the world are either spoken for or obligated to adhere to the will of their male guardian, whose presence is required at the marriage under most circumstances according to classical jurisprudence from all five of the main schools. Of course, this limits the extent to which the woman’s personal interests can be properly advocated for as the *nikahnama* is drafted.

One key mechanism for enforcing the conditions desired by the woman can be the consequence of divorce. A woman can theoretically assert that a divorce shall take place in the event of, say, domestic violence or alcoholism.¹⁰ This is one of the very few ways in which a woman holds to the power to unilaterally dissolve the marriage, albeit in theory; it is doubtful whether or not this practice is used often at the grassroots level. Classical jurisprudence recognizes several pathways for a couple to terminate their marriage contract and declare a divorce. The Qur’an and the *Sunna* are clear on the preferred method of couples dissolving a marriage; essentially, couples are encouraged to seek arbitration, work out their issues through discussion and be patient with one another. There are three types of dissolution of marriage: *faskh*, *khul’* and *talaq*.¹¹ In a *faskh*, the couple seeks arbitration by an Islamic judge, a *qazi*, and the judge decides that there is cause for dissolution. *Khul’* is a

⁹ Ali Kecia. “Islamic Marriage” in *The Islamic Marriage Contract: Case Studies in Islamic Family Law*. Harvard University Press, 2008, 21.

¹⁰ Ali, “Islamic Marriage”, 21.

¹¹ Ali, “Islamic Marriage”, 23.

dissolution in which both parties are in mutual agreement and the wife returns her dower to the husband.

Triple *talaq* is a unilateral termination of the marriage by the husband by triple annunciation of the word *talaq*, which literally means “dismiss” and is most commonly translated as “divorce.”¹² It is this three-step method that is uniquely at the center of controversy over State laws and the adjudication of Muslim personal law in India. In a most properly performed *talaq*, the husband is to pronounce *talaq* to his wife once, though not during the time of her menstruation, and wait for a specific period of time before the next pronouncement. Kauser Edappagath claims in his book on *Divorce and Gender Equity in Muslim Personal Law of India* that “the Qur’an insists on the presence of two just witnesses to the pronouncement of *talaq*”¹³, and jurisprudence requires a minimum of roughly two months between the pronouncement of each *talaq* so that the woman undergoes two periods of *tuhr* (in time in between her menstruations) so that the couple is able to spend enough time together to work out their differences and marital problems. This waiting period is called *iddat*. It is tradition for a woman to seclude herself from her husband while she is menstruating; thus this would be an inappropriate time to discuss matters such as divorce and inappropriate for the husband to declare a *talaq*. After sufficient time has passed the husband may issue a second and third *talaq* with *iddat* taking place between the two, if his feelings remain unchanged. After the *iddat* following the third invoking of *talaq* the marriage is terminated and the husband no longer has the unilateral ability to reclaim his wife. This form of triple

¹² Given that the Arabic language provides this specific term for divorce, which not interchangeable with other forms of dissolution of marriage, any usage of the term “divorce” hereinafter will refer specifically to *talaq*.

¹³ Edappagath, Kauser. *Divorce and Gender Equity in Muslim Personal Law of India*. LexisNexis, 2014, 75.

talaq is often referred to as *talaq-e-sunna*, with slight variations being called *talaq-e-ahsan* and *talaq-e-hasan*.¹⁴ The only way in which the couple could marry again is through the process of *nikah halala* which requires the woman to marry a different man and consummate the new marriage. Only under circumstances of marriage dissolution, death of the husband or prolonged abandonment can the previous husband seek to remarry his ex-wife, and a new *nikahnama* should be procured.

The origin of male-initiated unilateral divorce by the husband actually predates Islam, although it was improved through the development of personal law. In the Arabian society that existed before Islam, referred to by Muslims as *jahilyya*, a common practice was for husbands to unilaterally divorce their wives instantly, sans justification, and then to take them back at any time and place according to the husband's will. There were absolutely no limits on the number of times one could divorce, or dismiss, and reclaim his wife, nor was there any formulaic way of declaring the divorce. Essentially, husbands could claim anything against their wives, divorce them or inflict any injustice unto them and expect little to no consequences. Edappagath claims that it would have been impossible for the Prophet to entirely abolish this practice, so he took to the path of reforming it:

The Prophet had to mould the mind of an uncultured and semi-barbarous community to a higher development. Accordingly, he allowed the exercise of power of divorce to the husband under certain conditions and gave to the woman the right of obtaining separation on reasonable grounds.¹⁵

The Prophet's distaste for the pre-Islamic customary method of dissolving marriage would perhaps explain why divorce—particularly a unilaterally invoked one—is strongly

¹⁴ Edappagath, Kauser. *Divorce and Gender Equity*, 77.

¹⁵ Edappagath, 72.

discouraged and even treated with disdain in Islamic canon, while arbitration and compromise are preferred methods of marital conflict resolution.

Furthermore, this aversion to unilateral male-initiated divorce, or rather this idea that the Prophet was compromising with the preexisting culture, could explain why the unilateral abilities of the husband are revoked following the *iddat* after the final *talaq* and the process for reestablishing the marriage is so difficult, and even impossible if the woman does not consent to remarrying the same man.¹⁶ Also in contrast to pre-Islamic Arabia, the Qur'an and the *Sunna* have been clear on the expectations of a husband to provide for his family both materially and financially. Thus, the classical jurists uphold that a husband is to pay maintenance to his wife after marriage dissolution. This is similar to the Western concept of alimony in that it serves the same purpose, except Muslim personal law stipulates that this payment is only due for three consecutive months after the dissolution.

Given all of this information and clarifications, we must once again contextualize this in the Indian subcontinent. Although the many of media and news sources throughout the world and in South Asia—and the title of this paper for that matter—have referred to the current topic of controversy as “triple *talaq*”, it is crucial to make the distinction that it is actually instant triple *talaq* that is being discussed. Furthermore, this *instant* triple *talaq* is something novel and something of a legal idiosyncrasy in South Asian Hanafism. The practice of triple *talaq* has evolved in India to often be completed in a single instance, sometimes even via text message or voice mail. This instant triple *talaq*, which does not adhere to the requirement of *iddat*, has long been controversial within the Muslim community

¹⁶ The process for re-marrying after a divorce is called *nikah halala*. In this process the woman would have had to enter a second, legitimate marriage, consummate it, and undergo a dissolution of said marriage or become widowed or abandoned in order for her first husband to pursue her once more.

of India, and is the very practice which recently became the center of tense public discourse. While Hanafi jurists and scholars have always allowed for triple *talaq*, instant triple *talaq* came to be permitted because of a legal loophole. In the introduction to his study on the *Shah Bano Controversy*, Ashgar Ali Engineer explains that members of the *ulema* who favor instant triple *talaq* “maintain that the Qur’an has not laid down any specific method of divorce and, though the Prophet, they maintain, showed his anger against this form of divorce, he did not indicate that such a divorce would not be valid.”¹⁷ Although the practice has been banned in twenty-two countries, including Pakistan, Bangladesh, the UAE, Saudi Arabia, Algeria and Morocco,¹⁸ and many Hanafi scholars and jurists strongly oppose it, instant triple *talaq* has been upheld in India primarily because of this technicality.

Many scholars, members of the public and Indian government often refer to instant triple *talaq* as *talaq-biddat*. The usage of this Arabic term, sometimes written *talaq al-bid’ah*, appears in works of the BMMA, AIMWPLB and even in the official Supreme Court judgement, and is controversial in its nature. The word *bid’ah* means “innovation” or “unorthodox”, K.N. Ahmad’s book on marriage and divorce explains that “It is highly condemned and even declared sinful, but nevertheless it is considered legally effective.”¹⁹ However, it is imperative to understand how this term is most often used within Muslim communities. What the term actually implies is that if the object or practice at hand was not present during the time of the Prophet Muhammad, or was not outright approved by him, it

¹⁷ Engineer, Asghar Ali. *The Shah Bano Controversy*. London: Sangam, 1987, 7.

¹⁸ Press Trust of India. "India's Muslim Neighbours among 23 Countries That Have Banned Triple Talaq." <https://www.hindustantimes.com/>. September 19, 2018. Accessed May 11, 2019. <https://www.hindustantimes.com/india-news/india-s-muslim-neighbours-among-23-countries-that-have-banned-triple-talaq/story-J8b9HkOCwdMAIWyscwZMK.html>.

¹⁹ Ahmed, K. N. *The Muslim Law of Divorce*. New Delhi: Kitab Bhavan, 2006, 67.

is not to be accepted. For example, this is how the Wahhabi leadership in Saudi Arabia has justified prohibiting women to drive, access to certain technologies and dress similar to those who lived in the early seventh century BCE. Beyond its fundamental definition, *bid'ah* has become one of the negotiable words that is used by any entity which wields power over any vulnerable group of Muslims. In order to do this, entities like the Saudi government incorporate the concept of *bid'ah* in hollow accusations of unorthodoxy. Although the concept is important to the development of Islamic and Muslim personal law, it can be used as a fundamentalist tool for determining what is and is not acceptable.

Following this logic, it could be understood that Indian Muslims' usage of this term in reference to instant triple *talaq* is an attempt to subdue the overbearing misogynistic authorities. However, the overwhelmingly Hindu Indian government's recent appropriation of the Islamic term *talaq-e-biddat* is perhaps problematic as it symbolizes an attempt to use Islamic terminology to assert dominance over Islamic authorities. Instant triple *talaq* is not the only method of dissolving a marriage that is seen as unorthodox, but the fact that it is commonly categorized as such is quite problematic for those arguing for the continuation or legitimization of the practice. Due to ambiguity in the Qur'an and *Sunna*, jurists of the main Sunni schools have discouraged the practice, but continue to recognize its legitimacy. Although Hanafi and Maliki law, have been most influential in Indian Muslim Personal law, jurists and scholars of those schools around the world have declared it sinful or simply disapprove. The only group to absolutely reject the legitimacy of instant triple *talaq* are Shias.

In conclusion, the Shariat is neither divinely inspired nor entirely man-made. Rather, it is a mixture of the two that is established in variety of ways in a complex and unfixed system. The *ulema*, who master the study of the sources of the Shariat and are responsible for

adjudicating Muslim personal law face thus they have great responsibility in educating and supporting members of their community. However, given the nature of power and authority within their communities, the members of the *ulema* also face a great temptation to abuse their authority. As the Indian subcontinent experiences the destructiveness that colonization bares on such authoritative institutions, the *ulema* struggles to preserve its status and ensure a space for Muslim personal law through the formation of a colony and later a nation. Throughout these transitions, Muslim women's rights become more and more vulnerable as two patriarchal forces—the State and the *ulema*—carry on with in their struggle for power.



The Effects of British Colonial Rule on Personal Law

The issue of authority and adjudication regarding Muslim family law in India, like many of today's issues, can be traced back to British colonial rule. Adhering to the classic Western colonizer mode of operation, the British found grounds for instituting their own law and order by deeming Indians as heathens and savages—uncivilized. Even more so, they harped on what they saw as abhorrent treatment of women. Partha Chatterjee describes this in his chapter on “The Nation and Its Women”:

Colonialist critics invariably repeated a long list of atrocities perpetrated on Indian women, not so much by men or certain classes of men, but by an entire body of scriptural canons and ritual practices that, they said, by rationalizing such atrocities within a complete framework of religious doctrine, made them appear to perpetrators and suffered alike as the necessary marks of right conduct.²⁰

The colonial motive had become intertwined with what Chatterjee calls the “civilizing mission” as a means of justification for the exploitative ulterior motive. British efforts to

²⁰ Chatterjee, Partha. *The Nation and Its Fragments: Colonial and Postcolonial Histories*. Princeton, NJ: Princeton Univ. Press, 2007, 118.

“civilize” Indians honed in on traditions and rituals, particularly those involving women, and this quickly led to the creation of Anglo-Mohammadan Law, in which these colonizers attempted to codify Muslim personal law. As discussed, Muslim personal law in India was not uniform, and there was fluidity between Hindu and Muslim cultures, which led to a plethora of inaccuracies, misunderstandings and misinterpretations by the British that only caused negative consequences for their subjects.

Nevertheless, they embarked on this “civilizing” mission, which was rooted in the argument that given the traditions, practices and rituals of Indian culture, particularly those involving women, Indian people are “barbaric.” One of the most obvious consequences was a power struggle, a sort of duel between the British Raj and elite classes of Indian men (Hindu and Muslim) in which Indian women were instrumental to both groups’ goals. Thus, women and their rights were often treated merely as instruments, as chess pieces. In this struggle, the Indian opposition to colonial-driven modernization developed into a nationalist movement by the beginning of the 19th century, in which the upper classes, who were most likely educated in British schools, pushed to defend pre-colonial traditions and customs, focusing on enhancing and reestablishing the spiritual rather than the material domain.²¹

This enhancement was not made to accommodate the modern developments, but rather to counter them and were born of the nationalist sentiments. The domestic world became the designated abode of spirituality while the public was a place for material aspects of life, and as the patriarchy asserted itself over the material world and took on the burden of modernization in that sphere, it pushed women to become the keepers of indigenous

²¹ Chatterjee, *The Nation and Its Fragments*, 116.

spirituality and assume the burden of protecting the values that came with that.²² This divide is at the core of nationalist efforts in the twentieth century, and as tensions deepened between Hindus and Muslims, indigenous spirituality came to mean Hindu spirituality.

Precolonial India was by no means a united, uniform nation with a central culture or religion or anything of the sort. The subcontinent was inhabited by a diverse population, hundreds of spoken and written languages, multiple dynasties, religions and sects, customary laws and cultural systems. A major component of the British's operation was to divide, categorize and codify. In this process, the British took to defining the barriers between the cultures and the peoples they encountered, and develop new policies that would optimize their economic gain. Overtime, these policies would inhibit Indian women's access to independent wealth and autonomy as the newly imposed customs for inheritance, land ownership and economic activities forced women to become more dependent on their male family members.

Where lines between cultures and religious groups were blurred, the British solidified them by developing codes and legislation for governing Hindus and Muslims as mutually exclusive groups. Thus, the British established a formal institution for Muslim personal law infused with British principles and values. However, the nuances, fluidity and complications of customary and religious laws pertaining to family and personal matters stood as an immense challenge for these white men attempting to "save" brown women from brown men as Spivak puts it in her monumental piece, *Can the Subaltern Speak*. Since developing a State-regulated, systematic rule of law is essential to the operation of ruling and colonizing a people, the British were practically stunned when it came to the Shariat. Eventually, Anglo-

²² Chatterjee, 126.

Mohammadan Law developed as the colonial authorities made efforts to fuse British principles and laws with Muslim cultural and religious customs that were rooted in the Shariat. They went about slowly, over the course of the 19th and 20th centuries, piecing together a system of codes based partly on legislation, but especially on judicial precedent;²³ consequentially, the *ulema's* power and authority declined.

In an attempt to retain power and protect Islamic law, the members of the Deoband scholarly community established *dar-ul-qazas*, courts that operated on Sunni law to rule family matters. It was also, however, an attempt to spare the spiritual domain and domestic spaces, from colonization. The Muslim League, bolstered by the *ulema*, proposed legislation that required Muslims to be governed by Muslim personal law, and soon after, the colonial power passed the Personal Law (Shariat) Application Act of 1937. This law proved their acceptance of the authority of these Shariat-based courts for matters that concern the family and household, which had historically been treated as a political unit in Indian societies, as well as a compromise in authority. The British were now limited in their ability to impose on the spiritual domain of Muslims. This is laid out in Section II of the act as quoted below.²⁴

Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions

²³ Roff, William R. "Customary Law, Islamic Law, and Colonial Authority: Three Contrasting Case Studies and Their Aftermath." *Islamic Studies* 49, no. 4 (2010): 455-62. <http://www.jstor.org.ezproxy.lib.utexas.edu/stable/41581119>.

²⁴ Tschaeler, 7.

and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).²⁵

Similar to much legislation coming from the British Raj, this reform was not received entirely without controversy. Section V of the Shariat Act of 1937 required for Muslim marriages to be dissolved in State-run courts under certain circumstances, which was more than displeasing to the Muslim patriarchy. In a further reach for control and authority, the *ulema* achieved the repeal of this clause with the passing of the Dissolution of Muslim Marriages Act (DMMA) in 1939. The Act specifies that a Muslim woman seeking to dissolve her marriage must provide a reason, or reasons that are acceptable under Muslim personal law.²⁶

So, on one hand was the civilizing mission of the British, which was founded on the saving of Indian women from Indian men, on account of oppression and abuse. On the other was a class of Muslim leaders striving to tighten their grip on family affairs in the mission to save Muslim women from the destructiveness of modernization and colonization. In this equation, there were plenty of women siding with the *ulema*, who wanted to fight against colonization by strengthening religious institutions. However, at the forefront of these institutions were patriarchal forces perpetuating a lack of inclusiveness in the decision making process. The political status that these institutions achieve symbolize the transition of the spiritual domain from a private, domestic space to a very public one, which is how the Muslim patriarchy justified the exclusion of women. Both the *ulema*, a community made up almost entirely of men, and the British forces—equally patriarchal, although the power of white women in the colonizing process is not to be underestimated—were justifying their every move as an effort to improve the standards for Muslim women. However, as nationalism

²⁵ The Muslim Personal Law (Shariat) Application Act, § II (1937).

²⁶ Dissolution of Muslim Marriages Act (1939).

evolved and persisted, “the issue of ‘female emancipation’ seem[ed] to disappear from the public agenda of nationalist agitation.”²⁷ Chatterjee argues that disappearance is not because the nationalists declined to make women’s issues a topic for political debate, but rather they refused to negotiate women’s freedoms, rights and conditions with the colonial powers whose only goal was political and economic gain.

This position on women’s rights extended beyond the Muslim community to nearly all groups belonging to this relatively new Indian nationality. For women trying to take this matter into their own hands, the battle was not publicly fought, as it historically has been in the West. In colonial India, rather, women took action from within domestic realm, the home of the spiritual domain. Thus, it was not something that can easily be studied, or categorized as any sort of movement, as the evidence of this struggle cannot be found in public documents, historical reports or anything of the such. Chatterjee explains that through personal diaries, autobiographies and other personal artifacts, it is clear that this was the space in which many Indian women fought to define for themselves what it means to be an Indian woman as the nationalist idea of “woman” solidified more and more in public and political contexts where the patriarchy and nationalism reigned.²⁸

Regarding Muslims, specifically, and nationalism, the independence declared in 1947, did not reap the all the same benefits for Muslims as it did for others. The nationalist movement took on the primary identity of Hinduism—that is Hindu traditions, histories, culture and spirituality. Thus, when the colonizers were finally expelled, a great rift had

²⁷ Chatterjee, 132.

²⁸ Chatterjee. 133.

solidified between Muslims and Hindus in the new nation which was tasked with establishing an identity and a narrative to present on the world stage.

Throughout the colonization of India, the *ulema* witnessed drastic changes to its role in society, as did Indian Muslim women. The laws enacted under the British Raj tremendously reconstructed social and legal structures and institutions throughout the subcontinent. The consequences of this manifested in conflicts that endured for generations, and are ongoing even today. Tensions between Hindus and Muslims sprouted from the British policies that defined these groups and incorporated them into the colonial system in different ways, all but erasing the memory of two fluid and coexisting forms of religion. The spiritual domain further became isolated to domestic spaces, especially for Muslims who remained in India after the formation of East and West Pakistan in 1947, and so it was Muslim women who took on the burden of protecting Islamic culture and tradition.²⁹ During these shifts in national identity and power, Muslims faced persecution and discrimination under the law, and Muslim women were pressed to prioritize their religious identity over their gender. Therefore, issues of gender inequality and misogyny that under personal law struggled to receive much attention.



Timeline of State Intervention in Muslim Personal Law

This timeline features eight significant occasions in which the State—be it the British Raj or the Indian government—interfered with Muslim personal law. Looking through these

²⁹ East and West Pakistan were established as a separate country just north of India in what became known as the Partition. Millions of people were displaced and massacred as Hindus from the new country of Pakistan fled across the borders to the newly formed India, and Muslims fled from India to Pakistan. It was at this point that Muslims became a significant minority in India and marginalized religious group as the new, independent nation of India took on a predominately Hindu identity.

landmark pieces of legislation and Supreme Court cases, one can recognize a declining trend in the amount of authority Muslim personal law is legally able to maintain in the lives of Indian Muslims from the colonial period to Modi's regime. The most important cases to note are those of Shah Bano in 1985, which is coincidentally around the rise of the BJP, and Shayara Bano in 2016 (not related). These cases pushed the limits of personal law in lieu of State law, challenging the authority of the *ulema*, while also indicating that Muslim women were becoming increasingly frustrating with the Muslim patriarchy's interpretation of Islamic laws which perpetuates abuse and misogyny.

1937

The Muslim Personal Law (Shariat) Act

This legislation was passed under British colonial rule and ensures that the Muslims in India are governed by the Muslim personal law as codified by the British with the guidance of the *ulema*. However, it restricts the adjudication of personal law strictly to matters of family law, which includes marriage, dissolution of marriage, inheritance etc. For the *ulema*, it is a significant win, establishing a degree of State-sanctioned authority of the *dar-ul-qazas* and the network of scholars and jurists.

1939

The Dissolution of Marriage Act

The majority of Muslims in the subcontinent had been adhering to Hanafi law, which maintains the severest restrictions on dissolution of marriage, especially for women who wish to initiate the process. In fact, records show a significant increase in the number of women in the early twentieth century who resorted to denouncing Islam for the sake of obtaining a divorce through the courts. Urdu poet, philosopher and sociopolitical commentator, Iqbal,

urged members of the *ulema* to reform Hanafi law in an effort to alleviate some of the pressures driving Muslim women to denounce Islam or to remain trapped in unbearable marriages. In 1931, a fatwa was issued by Maulana Ashraf Ali Thanavi, a prominent influencer in the scholarly community, titled *Al-Hilat un-Najiza li'l-Halilat al-Ajiza* or "A Successful Legal Device for the Helpless Wife." He argued that if Muslim women could not obtain grounds by which to dissolve their marriage under Hanafi law, they could seek a judicial dissolution of the marriage on the basis of Maliki law. The combining of these two different schools of law is a practice called *takhayyur*, and it made its way into this landmark piece of legislation of 1939. Under this act judicial dissolution of marriage was to be granted to a woman under conditions of cruelty, insanity, impotence, disappearance or imprisonment or failure to fulfill duties by the husband.³⁰

1981

Supreme Court Criminal Appeal No. 103, Mohammad Ahmad Khan vs. MP High Court

The Supreme Court upheld a Madhya Pradesh High Court decision based on Criminal Penal Code 125, and required husbands to make provision for their divorced wives if they have no other means of sustenance until they remarry or die. This would require Muslim husbands to pay maintenance beyond the period of *iddat*. Ultimately the Court stated that the Criminal Penal Code is to prevail over personal law in places where the two conflict.

The panel of Supreme Court Judges invoked a verse from the Qur'an on maintenance, Verse 241- Chapter II: "For divorced women maintenance (should be provided)

³⁰ Minault, Gail. "Women, Legal Reform, and Muslim Identity." *Comparative Studies of South Asia, Africa and the Middle East* 17, no. 2 (1997): 1-10.

on a reasonable (scale). This is a duty on the righteous.”³¹ The All India Muslim Personal Law Board claimed the Supreme Court had no right to interpret the Qur’an, nor interfere with Muslim personal law. They then launch a campaign against the judgement referred to as the “agitation.”³²

1985

Mohammad Ahmed Khan vs. Shah Bano Begum

A Supreme Court panel made up of five Hindu judges decided that Shah Bano Begum was entitled to maintenance beyond the period of *iddat* under section 125 of the Code of Criminal Procedure. This case was a national spectacle as it challenged the authority of Muslim personal law in instances where it conflicts with the laws of the nation-state. Until this case concluded, Muslim women had been receiving monthly financial support for only three months following the dissolution of their marriages. Women like Shah Bano who were suddenly thrown out of their husband’s home after being instantly divorced were destined for financial hardship in the struggle to earn money and support their children, as three months was not enough time to recover their financial stability. Meanwhile, the Indian government had long upheld that husbands who were not governed by Muslim personal law were obligated to pay maintenance to their wives until their children reached adulthood or the woman remarried.

This decision prompted legislation that required Muslim men to pay their wives maintenance beyond the period of *iddat*, despite the Islamic jurisprudence and the authority of Muslim personal law in family matters granted by the 1937 legislation. Marches, protests

³¹ The Qur’an, *surah* 2, verse 241.

³² Engineer, *The Shah Bano Controversy*, 9.

and conferences were hosted by prominent Muslim figures and organizations throughout the country, including the AIMPLB. This became known as “the agitation” and it prompted the strengthening of Muslim opposition to State interference in personal law. The agitation was especially fueled by the recent augmentation of Hindu nationalism as the BJP came onto the political scene.

For Muslim women’s activists, this secular decision became a major turning point and sparked a great diversification of approaches to activism and positions on the Unified Civil Code (UCC). Many leading activists, including Madhu Kishwar, founder of the feminist *Manushi* magazine, who expressed concern for a UCC that would be severely influenced by Hindu nationalists. The nation was shocked to find self-proclaimed feminists and women’s rights activists in the Muslim community side with patriarchal forces such as the *ulema* and AIMPLB on this issue. Furthermore, this case proposed an answer to a question that had been on the minds of Muslim citizens since the formation of an independent India, and after the devastation of Partition: to what extent can a power that claims to be democratic accommodate for or intervene in unique laws and customs that are tied to particular religious communities? The Shah Bano controversy provided two possible resolutions to this question: either the State was going to allow Muslim personal law to precede the constitution, or it was going to assume authority over personal law. The fervent protests against the Supreme Court decision that enacted its reversal allowed for a decades-long delay in defining the relationship between the State and religion.

1986

Muslim Women (Protection of Rights on Divorce) Bill

Following the fervent public response to the final judgement on Shah Bano case, Prime Minister Rajiv Gandhi orchestrated a response that would be an attempt to ameliorate the tensions. The 1986 bill countered the Supreme Court decision by relieving Muslim men of the duty to pay maintenance beyond the period of *iddat*. Instead, this legislation placed the financial burden on the family of the divorced wife, or unto the *waqf* board (the Islamic institution for charity within the Muslim community).

2016-2017

Shayara Bano vs. Union of India & Others

The Supreme Court Justices JS Khehar, a Sikh, Kurian Joseph a Christian, RF Nariman a Parsi, UU Lalit, a Hindu and Abdul Nazeer, a Muslim, heard the case of Shayara Bano and other petitioners who argued that instant triple *talaq* was neither essential to Islam, which would make it a protected practice under Article 25 of the Indian Consitution, nor acceptable according to the Criminal Code as it was “arbitrary” and “discriminatory.” Justices Nariman, Lalit and Joseph determined this was not essential to Islam and Muslim Personal Law, and voted to declare the instant triple *talaq* carried out by Bano’s and the other petitioners’ husbands invalid. The case will because discussed in further detail in the third chapter.

2017

The Muslim Women (Protection of Rights on Marriage) Bill

This amendment to the 1986 legislation was prompted by the Supreme Court decision on the Shayara Bano case, and banned the practice of instant triple *talaq*. While the legislation was welcomed by many activists and women who had long been seeking its dismissal, the *ulema* and a large community of Muslims expressed outrage and fear, similar to that of the agitation following the Shah Bano case, over an increasingly violent Hindu nationalist regime intervening in Muslim personal law.

2018

The Muslim Women (Protection of Rights on Marriage)

This amendment intends to criminalize instant divorce, with a maximum of three years of imprisonment for Muslim men guilty of issuing a in instant *talaq* in any form, written or verbal. After months of deliberation in the chambers of Parliament, the PM Modi decided to circumnavigate the legislative process by publishing an executive order to criminalize the practice. In December of 2018, the lower house of Parliament, Lok Sabha, voted the bill forward to be debated in the upper house, Rajya Sabha, where approval has been stalled by gridlock. Without Parliament-approved legislation the executive order will expire, and the act will be decriminalized.



The eight cases and laws featured in this section summarize the history of State intervention in Muslim personal and the development of laws on Muslim marriage and divorce from the Colonial Era to today's India. The earliest law featured, the 1937 Shariat Application Act, laid the foundation for the separation of power between the State and the

ulema where matters of family law were concerned. The Dissolution of Muslim Marriages Act that was passed just two years later represents the last time that the *ulema* expanded rights and mobility for women within Islamic marriage. Simultaneously, it restricted the British Raj's ability to encroach on the *ulema*'s power over the Islamic institution of marriage. Each of the Supreme Court cases—Shah Bano's and Shayara Bano's being the most important—serve as key examples of the modern Indian government's struggle to determine the amount of power and authority it should delegate to the *ulema* under the Constitution, with Shayara Bano's case revealing a new, radical direction.



Muslims in Modi's India

In order to understand the reasons for the hyper-politicization of triple *talaq* and the Shayara Bano case, it is crucial to understand and consider the social and political context of time. The relationship between this particular religious minority and the State. In saying to “Modi's India,” I am referring not only to the State in which this person is the Prime Minister, but the State in which the political majority is a powerful group rooted in Hindu nationalism, or the *Hindutva* movement. This movement, founded on the ideas of one V.D. Sarvarkar, who imagined a militarized patriotism that strived to cleanse India of anyone that was anti-Hinduism, which he characterized as anyone not a Hindu. He also defined a Hindu, not only by religious identity, but by nationality, claiming that a Hindu is someone who considers the subcontinent (he was writing in 1923 before the partition that created East and West Pakistan) his fatherland and the cradle of his religion. This is the very idea upon which the Bharatiya Janata Party established itself in 1984, and the goal towards which it has been advancing ever since.

Godhra Riots

On the morning of February 27th, 2002 a train headed from Ayodhya (a popular Hindu pilgrimage site in Uttar Pradesh) to Ahmedabad, Gujarat stopped in the predominately Muslim town of Godhra. Amidst the hundreds of Hindus chanting on the train, a fire erupted killing nearly sixty passengers and igniting a series of deadly riots and massacres throughout the state. To this day, vile and terrifying stories of torture and heinous murders continue to surface. A 2005 report declared the initial fire an accident, though the immediate assumption that a Muslim or group of Muslims was responsible for the train fire had already planted a firm, deep division between the two religious groups. The reported death toll surpassed 1,000,³³ while the number of displaced peoples surpassed 150,000. In the aftermath 94 people were put on trial, twenty sentenced to life in prison and eleven sentenced to death.³⁴

Just four months before these bloody events took place, Narendra Modi—a member of the BJP with little experience in government—became the Chief Minister of his home state, Gujarat. By the very next day, Modi's aides had endorsed a state-wide strike, escalating and legitimizing the violent attacks. The new Chief Minister and puppet master “presided over the well organized and systematic liquidation of the life, liberty, property, business and dignity of *lakhs*³⁵ of Muslims across Gujarat” to convey a message that would ring throughout

³³ Afp. "How India's 2002 Gujarat Riots Unfolded." *Dawn*. June 17, 2016. <https://www.dawn.com/news/1265474>.

³⁴ "Timeline of the Riots in Modi's Gujarat." *The New York Times*. April 06, 2014. https://www.nytimes.com/interactive/2014/04/06/world/asia/modi-gujarat-riots-timeline.html#/time287_8190.

³⁵ One *lakh* is equal to 100,000.

his political career “ [the] Muslim minority can live in India only if they can win the goodwill of the Hindu majority.”³⁶

Indian headlines in the coming weeks read “Parliament slams Narendra Modi for carnage, but *Hindutva* hardliner may gain politically from anti-Muslim violence,”³⁷ “Police accused of indifference”³⁸ and “BJP fiddles while Gujarat burns.”³⁹ The nation watched as the trials began to unfold; accusations and suspicion of corruption as certain BJP officials escaped severe charges, and Modi’s popularity within the Hindu-nationalist, *Hindutva*, movement and the BJP increased. Although the Congress party and nearly every other party and group in the country accused Modi and the BJP of inciting the riots, the strength of the BJP continued to grow, and in 2014 Narendra Modi became the Prime Minister of India.

The BJP’s support for Modi after these riots signified their goals for a future India; one in which the nation was *cleansed* of Muslims. For Muslim women, this came with pressure to prioritize the defense of their religious identities over the fight for gender justice. Modi’s 2014 rise to Prime Minister, strengthened these pressures as the Muslim community braced itself for an indefinite period of persecution and turmoil.

³⁶ Patel, Girish. "Narendra Modi's One-Day Cricket: What and Why?" *Economic and Political Weekly* 37, no. 48 (2002): 4826-837. <http://www.jstor.org.ezproxy.lib.utexas.edu/stable/4412905>.

³⁷ Mahurkar, Uday. "Gujarat Riots: Parliament Slams Narendra Modi for Carnage, but Hindutva Hardliner May Gain Politically from Anti-Muslim Violence." *India Today*. September 21, 2012. <https://www.indiatoday.in/magazine/cover-story/story/20020318-gujarat-riots-is-narendra-modi-the-villain-who-allowed-mobs-to-seek-revenge-for-godhra-795729-1999-11-30>.

³⁸ Tnn. "Police Accused of Indifference | Ahmedabad News - Times of India." *The Times of India*. <https://timesofindia.indiatimes.com/city/ahmedabad/Police-accused-of-indifference/articleshow/2402171.cms>.

³⁹ Varadarajan, Siddharth, and Tnn. "BJP Fiddles While Gujarat Burns | India News - Times of India." *The Times of India*. <https://timesofindia.indiatimes.com/india/BJP-fiddles-while-Gujarat-burns/articleshow/2403856.cms>.

BJP Propaganda

If one takes a road through Uttar Pradesh, Rajasthan, Madhya Pradesh or any of the several states which serve as BJP strongholds today, one could hardly escape the countless billboards, murals, flags and flyers with the faces of Modi or the BJP lotus.⁴⁰ The urban landscape of India is absolutely plastered with images and slogans of the Prime Minister, his party and its associates. Major news sources like Zee News, Republic and Times Now are owned by affiliates and members of this party, which means that a large percentage of the information disseminated on popular platforms is likely to be censored and biased. Paired with the propaganda that infiltrates one's mind via visual stimulation, it is becoming increasingly difficult for many to avoid subscribing to BJP ideologies.

While the information available on current issues becomes susceptible to State-sponsored censorship and bias, so does the information on historical events and figures. Attempts to erase India's history of rich, strong Muslim empires are manifested in name changes of destinations; Allahabad became Prayagraj, Faizabad district became Ayodhya, Ahmedabad (one of the central sites of the Godhra riots) became Karnavati. Every week it seems new proposals are pouring in for cities to be renamed. At the stoops of mosques and sites of Islamic architecture like Char Minar, makeshift temples are sprouting up over night. The Taj Mahal, one of the most famous buildings in the world, has been at the center of this sort of erasure discourse as BJP members propose excluding it from Indian tourism materials with one Member of Parliament (MP) even stating that it was a "blot on Indian culture" and "built by traitors."⁴¹ This strategy of rededicating history is dangerous for those whose ancestors are now being considered "enemies" of the State both in the past and today.

⁴⁰ In Hinduism, the lotus is a symbol of purity and is connected to the concept of enlightenment. The BJP uses this symbol as their logo.

⁴¹ "Indian Politician: 'Taj Mahal Built by Traitors'." *BBC News*. October 16, 2017. <https://www.bbc.com/news/world-asia-india-41635770>.

Hate Crimes and Discrimination

The number of recorded hate crimes increased after Modi took on his new position as MP. Lynchings, murders, public riots, rapes and kidnappings flood the cover of newspapers throughout the country on a weekly basis. In 2017 IndiaSpend, a nonprofit run by the Spending & Policy Research Foundation in Mumbai, published a report sourced from English-language media on the different types of hate crimes aimed toward Muslims in the country. Although the State does not distinguish religious-based hate crimes from others, nor account for communal violence in its data collection, IndiaSpend found that incidents of communal violence increased by 28% between 2014 and 2017.⁴² Cow vigilantes, Hindus who seek to harm individuals (often Muslims, or suspected Muslims) transporting or consuming beef, frequented social media platforms with videos of their proudly committed assaults on Muslim truck drivers, restaurant owners and bystanders in the *baazars*.

Some Hindus have taken to defending the rape of Muslim women and children as an act of patriotism. The 2018 case of an eight year-old Kathua⁴³ girl named Asifa gained international attention. Asifa was kidnapped and dragged into a temple in which she was repeatedly assaulted by the temple's groundskeeper, his nephew and two police officers—all of whom were Hindu. The girl was then murdered in the temple, and the perpetrators justified this as an attempt to expel the minority community from the area.⁴⁴ The incident

⁴² “Lynch Mobs, ‘Cow Vigilantes’ and Whatsapp: What Hate Looks like in India.” *The Washington Post*. https://www.washingtonpost.com/graphics/2018/world/reports-of-hate-crime-cases-have-spiked-in-india/?noredirect=on&utm_term=.41956db44d76.

⁴³ The Kathuas are an extremely poor group of Muslims in the northern region of Jammu.

⁴⁴ Press Trust of India. “Kathua Rape Victim Was Sexually Assaulted, Died of Asphyxia: Doctors Tell Court.” *Hindustan Times*. <https://www.hindustantimes.com/>. September 09, 2018. Accessed May 11, 2019. <https://www.hindustantimes.com/india-news/kathua-rape-victim-was-sexually-assaulted-died-of-asphyxia-doctors-tell-court/story-4nOgLfG4v65R6ZAPJA93UI.html>.

took place in January, but it was not until April that the Prime Minister released public statements and the case picked up attention in the media, as there were several attempts by local officials to protect the rapists.

It has been apparent through hate crimes and erasure of Muslim history and identity in the country supported by and sometimes even instructed by the heads of state that political tensions have transcended into violence and discrimination that threaten the safety and well-being of Muslims throughout the country, especially in regions such as Rajasthan, Gujarat and Uttar Pradesh where the BJP maintains a strong, unwavering presence. Since the Colonial Era, this is the cultural and political context in which the boldest imposition unto Muslim personal law.

Stories of Muslims unable to rent apartments, purchase homes or achieve promotions in their place of work are increasingly common, though they were never particularly rare in the more immediate post-Partition period. Challenges in escaping generational cycles of poverty, obtaining basic and higher education, and sustainable living situations are severe enough for hundreds of millions of Indians living in poverty everyday. However, the patterns of discrimination and violence that affect Muslims are being strengthened by the Hindu nationalist movement and intensify the marginalization of Muslims in India today.



The information provided in this chapter summarizes the long, and complex relationship between Muslims and the State that has developed from the Colonial Era to the Modi Prime Ministership. It is important to understand that while the *ulema* and the general Muslim public have endured centuries of oppression in the region, the internal debates and

further development of Muslim personal law remain stifled by today's oppressive regime as the community is likely to endure further State-sanctioned violence and oppression. The fluidity of Muslim personal law and Muslim identity still exists in many forms today, yet the external threats to the Muslim community as a whole, have allowed for the prolonged silencing of minorities and marginalized groups, such as women, on an internal level of the diverse demographic. As such, the rise of muslim women's activist groups, which will be discussed in the following chapter, signifies a rebellion from within, a refusal to remain silenced and a commitment to prioritizing the reformation of Muslim women's rights.

The description of Modi's anti-Muslim agenda and his party's excessive and overwhelming propaganda are the greatest obstacles in the way of Muslim women trying to speak up against the injustices and abuses being perpetuated by the Muslim patriarchy. In this game of chess, each movement in the direction that criticizes any aspect of an Islamic institution or practice can be considered a betrayal to the Muslim community and a gesture of alliance with the Modi regime.

MUSLIM WOMEN'S ACTIVISM AND THE MUSLIM PATRIARCHY

Chapter Two

While instant triple *talaq* has been a controversial issue within Muslim communities of India for generations, it has become hyper-politicized, largely due to the burgeoning dominance of violent Hindu nationalism—especially since the Godhra riots of 2002. The pressure on the *ulema* to retain its status in adjudicating Muslim personal law and its authority in the community resembles that of the Colonial Era. In the decade leading up to the 2017 Supreme Court ruling that instant triple *talaq* was not a protected religious practice and should be banned, the nation witnessed a surge of Muslim women's activism concerning issues of marriage and divorce. This chapter will provide an overview of who the most prominent groups and individuals such as the at the center of public discourse and activism surrounding the instant divorce controversy. The groups profiled in this chapter were selected not only because of their centrality to the discourse, but also because of their unique stances on the relationship between State and religion and their approaches to activism. To put this in the context of a *shtaranj ki baaazi*, once again, each group of Muslim women who fought for the abolition of instant triple *talaq* as a part of the grander fight for further equality and protection, faced a labyrinth of challenges. The dilemma of sacrificing one's strong allegiance with a male-dominated group, or with those who abhor State intervention, means being criticized by one's own community. It means opening oneself up for future, potentially unwanted State intervention.

This chapter presents a profile of four women's organizations and one male-dominated organization which serves as a symbol of the *ulema*. It analyzes the differences in

their styles of activism—whether they are secular or not, or traditionally supportive of State intervention and how these characteristics may have changed. The chapter then discusses how some of these organizations revived a movement that aimed to provide women more justice and protections in their marriage contracts as an attempt to change the gender politics from within the Muslim community. Finally, the chapter will tie in the geopolitical similarities of these organizations and the symbolic significance of the location that has now become the stage for the instant triple *talaq* controversy.



All India Muslim Personal Law Board

Founded in Mumbai in 1972, the AIMPLB has been at the forefront of every major conflict between the State and the broad Indian-Muslim community. This organization was never meant to steer clear of politics, thus its leaders have become public figures, often featured in televised and broadcasted debates and discussions. The entire organization is made up of more than two-hundred members; among them women make up 19% of the general members, 0.01% of the founding members and 0.1% of the executive committee. The AIMPLB pulls Islamic scholars, political figures and influential leaders from twenty-three states.

The Board has many different initiatives centered around issues ranging from activism in support of Babari Masjid,⁴⁵ to establishing a system of *dar-ul-qazas* (Shariat courts, lit. house of adjudication) throughout the country. While these *dar-ul-qazas* refrain from issuing

⁴⁵ The site of Babari Masjid is located in Ayodhya, Uttar Pradesh. Disputes over whether the mosque was originally a Hindu temple resulted in nationwide riots between Hindus and Muslims in the early 90s.

fatwas, nor are they eligible to administer criminal law, they do flex their authority over Muslim family law. According to Tschalaer, these courts “hold considerable power in the legal landscape”⁴⁶ as they provide a variety of services to Indian Muslim families from arbitration to providing and certifying marriage contracts.

The organization’s mission is rooted in preserving the authority of the *ulema* and Muslim personal law against the Uniform Civil Code (UCC) and any “indirect legislative measures” passed in an effort to progress the adoption of this code. Regarding instant triple *talaq*, the AIMPLB has resolved that not only is the bill banning the practice against Muslim personal law against the Indian constitution which permits the practices of customary law, it is first and foremost a bill that boldly intervenes in the Shariat which is “in and of itself harmful to Muslim women.”⁴⁷ The male-dominated Board has faced strong opposition from multiple Muslim women’s groups such as the AIMWPLB, BMMA and in some ways Bazm-e-Khavateen regarding the 2017 Muslim Women (Protection of Rights on Marriage) Bill which transformed the Supreme Court ruling into legislation and the subsequent 2019 legislation which criminalized it.



Bazm-e-Khavateen

Established in British India in 1934 by the old bourgeoisie of Lucknow, Uttar Pradesh, Bazm-e-Khavateen (trans. Women’s Assembly) is one of the oldest organizations to be discussed in this paper. Its founder, Begum Sultana Hayat, belonged to an elite class and

⁴⁶ Tschalaer, 53.

⁴⁷ All India Muslim Personal Law Board. <http://www.aimplboard.in/important-resolutions.php>. Trans. by author.

took an active role in the various reform movements at the time, particularly those that pushed for the modern education of Muslim women. In its early days, the organization hosted gatherings in Zenana Park, a public space that was only available to women—the first of its kind in Lucknow.⁴⁸

Unlike the AIMWPLB, this organization never intended to challenge the authority of religious leaders and organizations like the AIMPLB. In fact, the current President, Shahnaz Sidrat, stated that she “would like Bazm-e-Khavateen to become the women’s wing of the AIMPLB.”⁴⁹ According to Tschalaer, who spent time with Sidrat in Lucknow, the leader aligns herself ideologically with the more orthodox groups, which make up the majority of the AIMPLB, while simultaneously lamenting the underrepresentation of women. She says that “Although they have failed to regulate [instant] triple *talaq* or to effectively adjudicate family matters in the Dar-ul-Qaza, they are still ‘the only body’ representing our community. We have a lot of things in common, such as the struggle against the practice of dowry and female foeticide.”⁵⁰ Despite disagreeing on the one practice, Sidrat recognizes that religious authorities are often positioned to represent all Muslims on the political stage or to serve as a voice for the greater community, and has little to no quarrels about this. She simply hopes that Bazm-e-Khavateen may provide a gendered perspective to the discourses and debates in various Islamic institutions and organizations that have long been male-dominated.

Aside from regular meetings in Zenana Park, the organization provides Islamic education and literacy trainings as well as legal counseling and arbitration in the realm of

⁴⁸ Tschalaer, 58.

⁴⁹ Tschalaer, 57.

⁵⁰ Tschalaer, 57.

family law. Women are also allowed to offer *namaz* (prayers) in this Zenana Park, making it one of the very few places in the region where women are allowed to worship publicly. In an essay on Muslim women's rights activists, Tschalaer describes an interview she had with Sidrat about the direction in which she talks about her efforts to transcend the "binaries of women's empowerment versus Islamic patriarchy."⁵¹

Muslim women have offered namaz in the Zenana Park for over 75 years. Due to relative seclusion of the park, the religious clergy had never opposed this. As long as the gate was shut and the women remained invisible, there was no uproar. However, when she became president of Bazm-e-Khavateen in 1994, Sidrat decided to disrupt the spatial boundaries that shielded Muslim women's activism from the public eye for so long. Arguing that 'purdah [here the term purdah is used in terms of the spatial segregation of the sexes] is not a hindrance for publicizing Muslim women's public prayers', she started to invite the press to the weekly meetings. She explains that her motivation behind this initiative was less to solely disrupt the well-traveled imagery of the subjugation of Muslim women that to contribute to the creation of a feminist consciousness of the public space and the fact that women too can engage in religious activities outside the domestic sphere.⁵²

Sidrat's approach to activism and lack of interest in participating in discourse centered on pitting women's rights and Islam against one another makes her and Bazm-e-Khavateen unique in light of the other organizations discussed here. It also makes the organization's support for instant triple *talaaq* legislation more significant than any other organization's support for it because their stance symbolizes a major sacrifice in Bazm-e-Khavateen's mission to become a part of the AIMPLB and counter the anti-*ulema* sentiments of many popular feminist and women-oriented activist groups in India and around the world.

⁵¹ Tschalaer, Mengia Hong. "Muslim Women's Rights Activists' Visibility: Stretching the Gendered Boundaries of the Public Space in the City of Lucknow." *South Asia Multidisciplinary Academic Journal*, no. 11 (2015). doi:10.4000/samaj.3928, 17.

⁵² Tschalaer, "Muslim Women's Rights Activists," 17.



All India Muslim Women's Personal Law Board

The AIMWPLB was founded in 2005 by notable activist, Shaista Ambar, who is a native of Allahabad. The organization was established to counter the male-dominated All India Muslim Personal Law Board as tensions on women's issues became increasingly prominent. The leaders of the organization are driven by the idea that the Qur'an and Shariat are too often selectively misinterpreted by scholars and Muslim leaders with "chauvinistic", "patriarchal" and "essentialist" in an effort to disadvantage women, specifically regarding marriage and divorce.

Housed in a Lucknow mosque that allows men and women to pray together, this group consists of middle class Sunni and Shia Muslim women, serving as bridge between the two major sects. Although, the timing of its formation is ironic if not a pointed statement as it occurred just three months after that of the All India Shia Muslim Personal Law Board, which also splintered out from the AIMPLB. This group, which quickly gained recognition due to its noteworthy founder, believes that the realization of Muslim women's rights has been undermined by the politics surrounding religious identity and ideological differences between Sunnis and Shias. Ambar stated that "all *maulanas* do is to discuss what is Islamic and [what is] not. Nobody thinks about all these women who suffer from violence and poverty every single day. They have nowhere to go! That's why we have established the AIMWPLB."⁵³

⁵³ Tschalaer, 62.

The main pillars of their mission include providing religious education of Muslim women, providing arbitration, couples counseling, and encouraging *khul'*, the woman-initiated practice of dissolving a marriage. Most notably, one pillar is working to end “*talaq-e-biddat*”, a term that refers to instant triple *talaq*. Ambar opined that the practice is “un-Islamic” and “draconian” in a 2017 article about the Supreme Court’s plans to criminalize the practice.⁵⁴



Bharatiya Muslim Mahila Andolan

BMMA has been at the forefront of the movement to end instant triple *talaq* in India almost since Zakia Soman and Noorjehan Safia Niaz founded the organization in 2007. The name of the organization, which translates to “Indian Muslim Women’s Movement”, is strategically high-register Hindi.⁵⁵ Some may view this as an attempt to appeal to Hindu nationalists or even just moderate Hindus, but I argue that it is more likely an attempt to distance itself from the Islam-oriented activist groups. Although it aims to “understand and ameliorate” the marginalization of Muslim women, BMMA declares itself as a secular organization.⁵⁶ Rather than challenging the Islamic patriarchy directly, Naish Hasan, one of the founding members who is stationed in Lucknow, believes that the best approach to improving the standard of living of Muslim women is to hold the government accountable.

⁵⁴ Srivastava, Anupam. “Triple Talaq: Muslim Women's Personal Law Board Slams AIMPLB for Opposing Bill.” Hindustan Times. <https://www.hindustantimes.com/>. December 26, 2017. <https://www.hindustantimes.com/india-news/triple-talaq-muslim-women-personal-law-board-slams-aimplb-for-opposing-bill/story-0ZxtanYFndyxC5hAurplJK.html>.

⁵⁵ From a linguistic perspective, BMMA’s very Hindi name is a strong contrast to Bazm-e-Khavateen, which is high-register Urdu, which has developed politically as a language exclusive to Muslim communities.

⁵⁶ “About.” Bharatiya Muslim Mahila Andolan. March 21, 2016. <https://bmmaindia.com/about/>.

The BMMA founder holds strong opinions about the legitimacy of the clergy's political leadership, including organizations like the AIMPLB, the Shia Personal Law Board and even the AIMWPLB. Hasan challenges the clergy's very right to assume representation of the broad Muslim community based on her democratic philosophy as she exclaims, "Who appointed them as leaders?...I don't consider them as leaders of our community. I did not vote for them nor did anyone else."⁵⁷

Hasan believes the discrepancies in the standard of living for Muslim men and women is due more to political, social and economic factors than religious ones. In fact, she disagrees with Shaista Ambar's attempt to seek equality through Islamic texts, as Hasan opines that Muslim women's issues are rooted in the marginalization of the Muslim community as a whole. Furthermore, she claims that "the current reactionary conservative movement within Muslim communities, which endeavors to strengthen patriarchal values, has, combined with extreme poverty and marginalization, pushed Muslim women to the fringes of Indian society."⁵⁸

Hasan does, however, hope to set herself aside from other secular organizations as she recognizes a tendency for those to address religion and religious people negatively in an effort to prove their secularity, which ultimately fails Muslim women who are strongly connected to their religious identities. This is what sets her organization apart from the rest as she straddles the line between secularism and religiousness, proving that secularism is not inherently anti-religion. Hasan sees little problem in seeking intervention from the Indian government for matters such as instant triple *talaq* and the malpractice of *nikah halala*. BMMA has sponsored

⁵⁷ Tschalaer, 67.

⁵⁸ Tschalaer, 66.

educational trainings on these topics to both men and women of all religions in the general public. In 2016, they commissioned a report on instant triple *talaq* victims of various socioeconomic status in six different states. That same year, they drafted the Muslim Family Law Act, which is essentially an amended version of The Muslim Personal Law (Shariat) Application Act of 1937, and sent it to Prime Minister Modi for consideration. The act explicitly stated under the section on marriage dissolution that the only acceptable form of triple *talaq* should be *talaq-e-ahsan*, which refers to the form of triple *talaq* that takes place over the prolonged period of time described in the first chapter. It is safe to say that BMMA has faced backlash from multiple facets of the Muslim community, but its leadership and unique approach to activism have allowed the organization to push its agenda further than any other in the current political climate.



Nida Khan et al.

Although Nida Khan established her own organization in support of women divorced by instant triple *talaq*, she and several women just like her have made more headlines than the organization, collectively becoming an anomaly. In 2015, she was married off to Sheeran Raza Khan, a member of a powerful and influential Sufi family with strong connections to the Dargah Aala Hazrat seminary in Bareilly, Uttar Pradesh. Coincidentally, his uncle was once a member of the AIMPLB, but cut ties as recently as 2016 over sectarian issues. After years of domestic violence which ultimately caused her miscarriage, the marriage was dissolved when Raza Khan issued an instant triple *talaq*. She claimed that the instant divorce

should be held invalid in a civil court, which eventually escalated to the Supreme court which ruled in her favor.

Khan expressed outrage at the Islamic tradition, *nikah halala*, that required her to consummate a marriage with a third party in order for her husband to remarry her. In her situation, Khan was forced to enter a marriage contract with a member of the Raza Khan's family fulfill the consummation requirement before this new husband could dissolve the marriage and Raza Khan could remarry Khan. The reason for Khan's outrage against this practice is that in India, it has become common for a man to dissolve his marriage via instant triple *talaq*, regret the action and then either pay another man or find a friend or relative willing to marry the divorced woman and follow procedure by consummating and dissolving of the marriage. Throughout this process it is common for the woman's will and consent to be entirely disregarded, which was the case with Nida Khan.

While Khan's story and public statements against instant triple *talaq* and *nikah halala* shocked and enraged a variety of Muslims, it was her approach to activism that turned the most heads. Some called for a boycott against her that entailed the denial of a proper burial and acceptance in the community. One *mufti* even issued a fatwa against her father in which he called on the community to deny him entrance to any mosque for Friday prayers. However, many were still shocked when in August of 2017, Nida Khan announced her plans to join the BJP as the political party shared her fervor for abolishing instant triple *talaq*, *nikah halala* and polygamy.

Khan had already shown support of the BJP's, specifically Prime Minister Modi's, public condemnation of these practices, especially when she established her nonprofit, the

Ala Hazrat Helping Society, which aims to support women who were victims of these practices. While there are certainly Muslims who agree that these practices can be harmful to Muslim women and even some who wish for the Indian government to take action, it remains incredibly bold and unusual for a Muslim to join the BJP in this tense and violent political climate. Khan, however, is not entirely in a class of her own. That same year two other notable figures joined this Hindu nationalist party over the same issues, Nazia Elahi Khan and an instant triple *talaq* petitioner in the Shayara Bano case of 2016 (see chapter 3), Ishrat Jahan. Jahan underwent instant triple *talaq* in 2014 when her husband called from Dubai and pronounced the words over the phone.

Regardless of one's stance on instant triple *talaq*, it can be quite surprising to see these Muslim women seeking admission to the very political party that has been accused of sponsoring violence against Muslim communities. Thus, their decisions are symbolic of the multiple facets of Muslim women's activism in India, and could even be indicative of a growing rift, or rather, a splintering within the Muslim community as patriarchal authority figures continue to support those who manipulate the personal law to take advantage of women. This suggests that some Muslim women may harbor so little or no faith in the male-dominated system that implements the Shariat in areas of family law, and serves as a source of authority and leadership in the social sphere of many Muslim communities in India. Apparently, their faith is so diminished that it appears more promising to join the very forces that are considered tyrannical to the Muslim population. Perhaps, however, the decision to join the BJP was only meant to serve as a symbolic statement to leaders of institutions like the *dargahs* (Sufi shrines) and *dar-ul-qazas* and the AIMPLB that have long been perpetuating the sort of practices that Muslim women had previously expressed disapproval of within their

communities, in a far less public manner. In other words, perhaps this is an attempt to be heard and taken more seriously by the male leaders and authorities, or perhaps it was absolutely a genuine act, consequential of previous symbolic attempts to shake the patriarchy. Either way, it is a clear sign that there are Muslim women who are absolutely fed up with the male leaders in their community and are willing to cross lines to get their message heard.



Gender-Just Nikahnamas

At least since the passage of the 1986 Muslim Women's Protection Act and the Shah Bano case, Muslim women's activists have turned to *nikahnamas*, Islamic marriage contracts, as vehicles for optimizing the protections for women in a marriage, and effectively advocate within the Islamic court system for women's rights. These model *nikahnamas* are generally attempts to make socio-legal reform within the broad Muslim community of India, and often put pressure on the *ulema* and institutions like the AIMPLB rather than seeking State intervention.

Early models produced by women's activists in Mumbai included a *hidayatnama* and a *qarar*—guidelines for marriage and a pledge to adhere to the Shariat. These documents emphasize that the *Sunna* encourages arbitration and discussion in marital conflict resolution while viewing *talaq* as an absolute last resort, or that instant triple *talaq* is even considered sinful. In 2005, Uzma Naheed, one of the women who has produced several model *nikahnamas* explained her goals: "We wanted to involve the *ulema* in the work and wanted a

solution within the framework of [the Shariat].”⁵⁹ Since the *nikah* (official Islamic marriage) ceremony is administered by the local *qazi*,⁶⁰ and thus the *nikahnama* is also prepared by this figure, the hope is that these key individuals would incorporate gender equality and discourage malpractices that are harmful to women.

In 2005, the AIMPLB announced its approval of a model *nikahnama* that was originally drafted by Naheed and another leading activist in Mumbai, Flavia Agnes. The original document stressed that any form of abuse and neglect were prohibited, and explicitly stated that a husband should not utter *talaq* three times in one setting. However, the version that was approved by the AIMPLB merely “cautioned against” a husband invoking an instant triple *talaq*. The AIMWPLB introduced a model *nikahnama* in 2006 featured an extensive set of guidelines rooted in the Shariat, including a note that the *qazi* tasked with administering the contract and the *nikah* should explain to each party the stipulations established in the contract and the rights and obligations that come with an Islamic marriage. This model also stipulated the commonly accepted form of triple *talaq* which takes place over a longer period of time in which the husband waits a full *iddat*, or roughly three month period, between utterances of *talaq*. It also included prohibitions on issuing a *talaq* via phone or internet at any time when the husband is isolated from the wife.⁶¹

⁵⁹ Suneetha, A. "Muslim Women and Marriage Laws: Debating Model Nikahnama." Academia.edu. https://www.academia.edu/11451702/Muslim_women_and_Marriage_Laws_Debating_Model_Nikahnama.

⁶⁰ Qazis are traditionally men, although this is not a rule established in the Qur'an. In 2014, Naish Hasan, founder of BMMA made headlines throughout the country as she performed the role of a qazi for a friend's nikah.

⁶¹ Suneetha, A. "Muslim Women and Marriage Laws: Debating Model Nikahnama." Academia.edu. https://www.academia.edu/11451702/Muslim_women_and_Marriage_Laws_Debating_Model_Nikahnama.

BMMA has also been supportive of popularizing gender-just *nikahnamas* that prohibit instant triple *talaq* until there is a codified personal law. Although they are based in Lucknow, many of the marriages officiated with these contracts have been done in Mumbai and various places in Gujarat. Although these organizations' models were presented as suggestions, or options for the *qazis* to undertake, they circulated throughout and conjured much needed discourse within the *ulema* of India about desires in the community to ensure that the rights given to Muslim women in the Qur'an are protected.

These women's organizations' choice to revive the gender-just *nikahnama* initiative is a strategic one. They are using an Islamic framework as a foundation for discarding a husband's right to instant divorce from within the very institution that adjudicates Muslim personal law and administers these marriage contracts, the *dar-ul-qaza*. By making pursuing this pathway to reform and attempting to work with the *ulema* and AIMPLB, these women are testing the willingness of their patriarchal leadership to support gender-justice. This strategic move also safeguards the women's groups from critics that would suggest they preemptively turned their backs on the Islamic institutions that are supposed to provide channels for reform. In the complicated game of chess, this could be considered the sacrifice of a pawn. The women's effort to work with the *ulema* is represented as a move along the axis that symbolized the obstacles imposed by the *ulema*, and as a consequence they suffered a loss. The rejection of gender-just *nikahnamas* by the AIMPLB only pushed these determined activists further to the gates of the BJP-controlled Parliament.



Geopolitical Considerations

One feature to consider when analyzing triple-*talaq* focused activism is the historical and political significance of its geographical hub, Lucknow, Uttar Pradesh. Lucknow, otherwise known as *Nawabon ka Shahar* (City of Nawabs), is famous for its uniquely indulgent and extravagant culture influenced by the semi-autonomous Mughal rulers, Nawabs. These Nawabs functioned as a second tier of authority the Mughal Empire that—at its peak—reached from Kabul in present day Afghanistan to Mysore, nearly the southern-most regions of the subcontinent. The dynasty of Nawabs stationed in Lucknow, especially the final Nawab, Wajid Ali Shah, cultivated a legacy of luxury and grandeur through the commissioning of ornate monuments and structures like the Rumi Darvaza, the Qaiserbagh Palace Complex, the Bada and Chota Imambadas, massive shrines, tombs and gardens. All of these feature brilliant examples of Mughal and Islamic art and architecture, but also provide insight to the level of extravagance to which each succeeding Nawab progressed.

Aside from the visual spectacles the remain prominent, albeit most are crumbling and rather dilapidated, Lucknow was famous for its performing arts during the Mughal period. Some of the most famous artists including world-class *kathak* dancers and singers (most of whom came from the courtesan tradition), musicians and poets spent their lives training and perfecting their craft in this magnificent *Nawabon ka Shahar*. The courtesans who ran the large and ornate *kotas* (royally commissioned estates and complexes in which up to hundreds of women would become experts in etiquette and performance art) were famous throughout the subcontinent, and many of their stories were featured in the biographies and anthologies of emperors and British and French colonials.

Due to its proximity to powerful and influential Nawabs and the capital of the large state of Uttar Pradesh, Lucknow was a crucial locality in which the British colonial forces were determined to maintain a strong presence. The colonial forces worked amicably alongside the Nawabs for roughly a century, commissioning their own palaces and complexes like Firungi Mahal, University of Lucknow, Hazratganj, The Residency, a beautiful, lush and green space featuring a collection of homes, courthouses and other administrative facilities. Although the university and Firungi Mahal remain central to the hustle and bustle of today's Lucknow, Hazratganj and The Residency were two complexes that were historically restricted from Indian civilians, but also played important roles in the Indian Rebellion of 1857 in which the Indian army attempted to overthrow the British in a series of mutinies, but failed miserably. Many Lucknowites and influential figures throughout history have tended to blame Nawab Wajid Ali Shah for allowing this crucial Mughal domain to fall to the British as he was too concerned with frivolous matters and indulgences to build a substantial resistance to the colonial forces.

Today, the memories of a defeated yet grand Muslim dynasty and a vicious colonial power are cemented in the very infrastructure of the oldest parts of the city, and the activist groups mentioned in this chapter each hold strong ties to Lucknow. Both Bazm-e-Khavateen and the AIMWPLB were founded in this city with the former's office being located in Firungi Mahal. Shahnaz Sidrat herself is a resident of the neighborhood in which The Residency is situated, a true sign of generational wealth. With Uttar Pradesh holding the highest population of Muslims in India, and Lucknow as its capital, organizations like the AIMPLB and BMMA have developed a firm presence in the city as well, as one of BMMA's founding members, Naish Hasan, is stationed there.

In addition to the obvious significance of the city's historical context, another feature of Lucknow's political landscape is the fact that it has become the seat of one of the most powerful factions of the BJP as the Chief Minister of Uttar Pradesh who is stationed there, Yogi Adityanath, is one of Modi's closest allies. Thus, whether one is traveling through the new or the old parts of Lucknow, it is virtually impossible to turn any corner without being bombarded by BJP flags, posters and cut-outs of Modi and Adityanath and other government officials with BJP. The grandiose *Lok Sabha* building where Members of Parliament from Uttar Pradesh convene is pristine and ironically located in Hazratganj, the former British-only district. Although Lucknow has always been home to a Hindu population as well, there has been a large increase in the number of temples scattered throughout the city, especially as it expands, causing many of the Muslims, who are now a minority demographic, feel further marginalized. Muslim neighborhoods tend to be located in the oldest corners of the city where the government provides little to no resources for infrastructural improvements, poverty rates are higher and schools are of dismal quality. Furthermore, the *Nawab*-commissioned palaces and buildings are dilapidated and falling apart. Meanwhile, the newest areas like Gomti Nagar are flourishing with shopping malls, high-rise apartments, top quality schools and hospitals, and is home to families of most of the BJP officials stationed in Lucknow.

Being aware of these geopolitical factors are crucial for contextualizing the perspectives of Muslims who fear further encroachment of the Hindu nationalist BJP into their lives. Even more so, it is essential for grasping the history of the *ulema's* struggle for legitimacy and authority against the larger State powers, from the British to the BJP. Hence, it is only natural that Lucknow should serve as the arena for the fight over instant triple *talaq*.



One may consider the fact that four of the five organizations at the center of public discourse on instant triple *talaq* have been in favor of State intervention on the issue a simple and straightforward case of women versus the patriarchy. Perhaps one may even attempt to pass judgment on the very framework of Islamic law. However, their positions are far more complicated as each group's relationship to the Islamic patriarchy and the Muslim population is vastly different. Bazm-e-Khavateen, for example, is tied to the old bourgeoisie of Lucknow and strives to merge with the patriarchal All India Muslim Personal Law Board, so why would they take such bold opposition to their stance on instant triple *talaq* legislation? The All India Muslim Women's Personal Law Board is an organization that stands to further develop personal law on the path to gender equity—using the same framework as the AIMPLB to interpret law. So, why would they invite a Hindu nationalist regime to meddle in this matter that is internal to the Muslim community? Why would BMMA work so hard to obtain the support of a regime that has terrorized Muslim women? And why would women like Nida Khan go so far as to seek induction into the BJP? After generations of being silenced and disregarded by the male leaders of the religious community, these women are forcefully halting the consistent de-prioritization of their of their rights and safety.

If this were simply about women going against the patriarchy, then it would be counterproductive to bring in a regime that is equally male-dominated. If this were simply about the framework of Islamic law, or the potential for the religion itself to uphold institutions that are oppressive to women, there would likely be far more secular women's groups than religious-oriented women's groups at the center of this debate. Organizations like the AIMWPLB and Bazm-e-Khavateen would have far fewer supporters among Muslim

women. This, however, is about women who have been challenged with defending two sides of their identities simultaneously, choosing different methods of responding to that challenge, and coming together despite ideological differences to disrupt the power struggle between two distinct patriarchal forces for the long-awaited achievement of a common goal.

THE SHAYARA BANO DECISION

Chapter Three

While the leaders of BMMA, the AIMWPLB, Bazm-e-Khavateen and the AIMPLB have only recently dedicated the bulk of their efforts to debating instant triple *talaq* and propagating information on the practice, the issue has long been contentious in Muslim communities. Its recent hyper-politicization is largely due to the increased tensions between the male-dominated leadership of Islamic institutions and the BJP-majority government. In between the two have stood thousands of cases of instant triple *talaq*, many remaining unreported while hundreds piling up in various low-level courts as women's organizations have begun to gain momentum. The women's organizations discussed in the previous chapter each played a vital role in establishing a space for the landmark decision of August 2017. In fact BMMA even financially supported several of the petitioners on the case. The road to the decision was far from linear, as there had been historical cases like that of Shah Bano, which may not have focused entirely on triple *talaq*, but quickly became a model for how the State can choose to interact with Muslim personal law. It sparked such a controversy that the government decided to reverse the decision, ironically overruling the Supreme Court. This time, many women's activist groups around the nation welcomed the State intervention, until the executive order of September 2018. This chapter will discuss the final stretch in the journey to outlaw instant triple *talaq*, and analyze the responses to the historical judicial case and subsequent legislation.



2016-2017: Catalyzing the Movement

The nearly two years leading up to the Supreme court decision of 2017 were filled with public campaigns and national speaking tours sponsored by many prominent Muslim organizations. In 2017 BMMA published the final draft of the Muslim Family Act, a bill they had been crafting for three years and had sent directly to the Prime Minister himself in hopes that he would send it to Parliament. At its core, this bill aimed to codify Muslim family law in an attempt to eradicate the “arbitrariness and variances” in the Indian Islamic judicial system. While BMMA does not seem to propose any serious changes to the Muslim Marriage Act of 1939, they are strongly urging legislation on instant triple *talaq*, *nikah halala*, polygamy and the age of marital consent. Noorjehan Safia Niaz, a co-founder of BMMA, stated that the aim is to have Muslim women protected by law “Every community has their own marriage laws. We are also asking for one legislated law that can enable and empower us to raise our voice against unfair practices.”⁶² Another member of the organization explained the Islamic basis for their drafted bill “This draft is based on the values of equality espoused by the Quran and the Constitution of India. They are in the best interests of women and children.”⁶³ Additionally, there is clarification in the draft itself of its own foundation and intentions:

This Act, based on the values and principles of the Qur'an as prescribed in the Qur'anic verses...is to consolidate, clarify and codify the provisions of Muslim law

⁶² Dhanrajani, Rachna. "BMMA Releases Final Draft of Muslim Family Law." The Hindu. September 08, 2017. <https://www.thehindu.com/news/cities/mumbai/bmma-releases-final-draft-of-muslim-family-law/article19647152.ece>.

⁶³ Dhanrajani, "BMMA Releases Final Draft of Muslim Family Law."

and related procedure regarding Muslim marriage, divorce, maintenance during marriage, maintenance after divorce and widowhood, custody and maintenance of children and inheritance.⁶⁴

This clarification step is crucial for BMMA, as suggests that women ascribe to the same level of mastery of the Shariat and authority over Muslim personal law that has traditionally been exclusive to men.

The draft of this bill draws upon historical legislation on Muslim family including The Shariat Application Act of 1937, which made provisions for the Shariat to be applied to relatively all matters of family law; The Dissolution of Muslim Marriage Act of 1939, which used Maliki law create a pathway for women to end their marriages; and The Muslim Women's Protection Act of 1986, which followed the Shah Bano case dealing with maintenance after the period of *iddat*. While the drafters of this document stated their intent to uphold those major pieces of legislation, they do wish to do away with anything that could conflict with the statutes included in their bill. In the section VI, titled "Divorce," the draft recognizes wife-initiated dissolution of marriage (*khula* and *faskh*), husband-initiated (*talaq*) and dissolution by mutual consent (*mubarah*). It clarifies that wife-initiated dissolution of marriage does not require the consent of the husband, as some women are taught to believe so. It also specifies that any triple *talaq* that does not involve three periods of *iddat* after each *talaq* is "an invalid method of divorce."⁶⁵

While BMMA took to a more secular approach to activism and mobilization, the AIMWPLB and Bazm-e-Khavateen sought to challenge the *ulema* directly and mobilize in

⁶⁴ BMMA India, "Muslim Family Law – Draft Sent to the PM." Bharatiya Muslim Mahila Andolan. January 01, 2016. <https://bmmaindia.com/2016/01/01/muslim-family-law-draft-sent-to-the-pm-2/>.

⁶⁵ BMMA India, "Muslim Family Law – Draft Sent to the PM."

religious spaces. By touring the country and holding gatherings in mosques, meeting with members of the AIMPLB and prominent scholars in the *ulema*, Naish Hasan of BMMA and Shahnaz Sidrat of the AIMWPLB took very similar approaches to seek the prohibition of instant triple *talaq*. Meanwhile, the AIMPLB and members of the *ulema*, even on occasion Jamaat-e-Islami Hind, an organization that dates back to colonial India and often remains silent on politics, hosted lectures and meetings at religiously significant sites, mainly in Delhi and Lucknow, partly to preach the technical legitimacy of instant triple *talaq* according to Hanafi law, but most importantly, to warn against State-interference in personal law.



The Official Judgement

In 2017 a Sikh, a Christian, a Parsi, a Hindu, and a Muslim Supreme Court judge took to the bench to determine whether or not the instant triple *talaq* declared by Shayara Bano's husband would be voided. In the case, Bano and four other victims of instant divorce whose petitions were attached to hers all challenged the constitutionality of the practice as well as its legitimacy within Muslim personal law. They argued, with the support of BMMA, that the practice violated their fundamental rights according to Articles 14, 15 and 21 of the Indian Constitution as it was "arbitrary and discriminatory."⁶⁶ This was quickly recognized as the most important Supreme Court case on Muslim marriage laws since the Shah Bano case of 1985,⁶⁷ which was notably decided by a majority Hindu bench.

⁶⁶ Herklotz, Tanja. "Shayara Bano versus Union of India and Others. The Indian Supreme Court's Ban of Triple Talaq and the Debate around Muslim Personal Law and Gender Justice." *VRÜ Verfassung und Recht in Übersee* 50, no. 3 (2018): 300-311.

⁶⁷ Recall from the first chapter that this case solidified two pathways for the State's relationship with religion: either personal law would precede the Constitution, or be subjected to it.

Bano and the four petitioners involved in the case invoked the Universal Declaration of Human Rights, the International Covenant on Economic Social and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination Against Women in their argument. They claimed instant triple *talaq* was not only a nonessential and discouraged practice in Islam, but a practice that is considered inhumane by various forums and doctrines on human rights like the Hindu practice of *sati* was considered upon its outlawing. The fact that instant divorce had been banned in over twenty Muslim-majority countries, most of which invoke the Shariat in their lawmaking, supported these petitioner's claim that instant triple *talaq* was nonessential to Islam.

The case was originally brought on by Bano, who had been abused by her husband, Rizwan Ahmad, and other members of his family with whom they shared a home. Since the beginning of their marriage, Ahmad had been demanding Bano's father to pay a higher dowry, for which he did not have the means. Bano claims she "was tortured and physically abused by the respondent and his family. She was often beaten and kept hungry in a closed room for day."⁶⁸ Bano claims that she was also drugged on multiple occasions. On one in particular, in 2015, she was driven out to the city of Moradabad, which is roughly an eleven-hour drive from the city of Allahabad, Ahmad's home. The husband demanded that Bano's parents either deliver five *lakh* (500,000 Indian Rupees) or take their daughter back. According to reports, Bano was in such a state that it she would have certainly died if Ahmad was to abandon her, as he had threatened, in Moradabad. The parents, who had very little money to begin with, came to collect their daughter and brought her home with them to Kashipur, Uttarakhand.

⁶⁸ Shayara Bano vs. Union of India and Others (August 22, 2017), 6.

Over the course of four months, Ahmad made several visits to Kashipur in attempts to persuade Bano and the children, who had also been brought to Kashipur, to return to their matrimonial home in Allahabad. After he convinced Bano's parents to return the children, Bano herself still refused, and Ahmad filed for a restoration of conjugal rights at the Family Court of Allahabad. He was filing for his right to have access to his wife, under his roof, after he had beaten and drugged her and given her parents the ultimatum to pay a higher dowry or take her back. After Bano brought her complaints about the extreme abuse to the judge, Ahmad retracted his plea for restoration of conjugal rights and issued an instant divorce. Bano, however, was not even present at the time. In a letter to her on October 10, 2015, six months after she had returned to her parent's home, Ahmad completely denied the claims Bano had made about abuse, and blamed Bano for any physical harm that was done for her. He wrote that she had been threatening to falsely implicate him in threats to inflict injury upon herself and consume poison, and for those reasons he was "regretful" to issue an instant divorce in the presence of two marginal witnesses (neither of whom were even related to Bano).⁶⁹ This left Bano in an immediate state of financial distress, as she had been unemployed for several years and her father could not earn enough to support her and her two children.

According to the official 2017 judgement written by Judge Jagdish Singh Khehar, the Supreme Court panel decided "at the very outset...to limit the instant consideration, to '*talaq-e-biddat*'—triple *talaq*."⁷⁰ Understanding that this would have a monumental impact on the Muslim community, the five judges took their time to study the various methods of marriage

⁶⁹ Shayara Bano vs. Union of India and Others (August 22, 2017), 8.

⁷⁰ Shayara Bano vs. Union of India and Others (August 22, 2017), 9.

dissolution under Hanafi law, especially the differences between *talaq-e-ahsan* and *talaq-e-biddat*.

They referred to several passages from the Qur'an, notably *surah* two, verses 224 through 228:

And make not God's (name) an excuse in your oaths against doing good, or acting rightly, or making peace between persons, for God is one who heareth and knoweth all things. God will not call you to account for thoughtlessness in your oaths, but for the intention in your hearts and he is oft-forgiving, Most Merciful. For those who take an oath for abstention from their wives, a waiting for four months is ordained; if then they return, God is oft-forgiving, Most Merciful. But if their intention is firm for divorce, God heareth And knoweth all things. Divorced women shall wait concerning themselves for three monthly periods. Nor is it lawful for them to hide what God hath created in their wombs, if they have faith in God and the Last Day. And their husbands have the better right to take them back In that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them and God is exalted in power Wise."⁷¹

Kehar explains that the Judges interpreted these verses in a way that values contemplation and thoughtfulness on behalf of the husband when there are conflicts between him and his wife, and inherently disapprove of impulsive decisions that lead to *talaq*:

The above 'verses' caution husbands to understand, that an oath in the name of God was not a valid excuse – since God looks at intention, and not mere thoughtless words. It is in these circumstances, that 'verses' 226 and 227 postulate, that the husband and wife in a difficult relationship, are allowed a period of four months, to determine whether an adjustment is possible. Even though reconciliation is recommended, but if the couple is against reconciliation, the Quran ordains, that it is unfair to keep the wife tied to her husband indefinitely. The Quran accordingly suggests, that in such a situation, divorce is the only fair and equitable course. All the same it is recognized, that divorce is the most hateful action, in the sight of the God.⁷²

⁷¹ Shayara Bano vs. Union of India and Others (August 22, 2017), 15-16.

⁷² Shayara Bano vs. Union of India and Others (August 22, 2017), 17-18.

It is here that the Court relates its understanding of the legitimacy of instant divorce within the Shariat to verses that applaud patience and thoughtfulness as well as good intentions in husbands wishing to divorce their wives. Thus, the panel of Supreme Court Justices came to the conclusion that instant triple *talaq* was a practice that, on the basis of its abruptness, was despised in the Qur'an. This idea justified their determination that it was not an essential part of religious expression. Furthermore, the Hanafi school, and every other major school for that matter, condemned instant triple *talaq*, viewing it as being barely permissible, or even sinful. This pushed the Court towards a decision that no remarkable harm would occur unto Muslims in India if the practice were to be declared unconstitutional due to its violation of rights established under the Indian Constitution that should protect women from such “arbitrary” harm.



Parliament and Modi

When the decision to ban instant triple *talaq* came down from the Supreme Court in August of 2017, the both national and international media had a field day. Several weeks later, Parliament turned the decision into legislation, solidifying the unlawful status of instant divorce. Nearly every major news source in the West immediately saw this as a victory for Muslim women, although very few understood the decades of activism and sociopolitical circumstances that allowed the decision to come through. Indian media generally saw it as a success story as well, but what I noticed in my travels in North India whether I was speaking with middle class or lower class Muslim women, the landmark decision was a clear cause for concern. Many Muslims women, often regardless of how they felt about instant triple *talaq*, it was disconcerting that a government who had been enabling and directing the terrorizing

and of Muslim people was boldly intervening in personal law. For many it raised the question, *what will they do next?*

Later, in September of 2018, after the Supreme Court's decision was followed up by the official ordinance, Prime Minister Modi announced an executive order that would make instant triple *talaq* a criminal offense punishable by up to three years in jail. This legislation, which was well received by the BMMA, was perhaps unsettling for a broader faction of the Muslim community, and certainly for members of the *ulema* and the AIMPLB. In an op-ed written by *The Telegraph*, a widely read Indian newspaper among the upper class, the editorial board reflected the views of many as they questioned the justification of the new ordinance:

Any form of divorce is a civil matter; the bill turned it into a crime by proposing three years of prison for any man who pronounced instant triple talaq. A crime such as rioting can attract three years' imprisonment, while causing death by negligence can attract two. The disproportionate penalty is deliberate, as is the criminalisation, which is only permitted when the legislature finds that an act can cause 'harm' to the public. Any form of divorce is a civil matter; the bill turned it into a crime by proposing three years of prison for any man who pronounced instant triple talaq. A crime such as rioting can attract three years' imprisonment, while causing death by negligence can attract two. The disproportionate penalty is deliberate, as is the criminalisation, which is only permitted when the legislature finds that an act can cause 'harm' to the public.⁷³

Activists like Flavia Agnes, along with other members of the *ulema* and the AIMPLB, have raised similar arguments, claiming that there is no substantial justification for criminalization if the act is considered ineffective.

The executive order was supported by Amit Shah, President of the BJP and Yogi Adityanath, Chief Minister of Uttar Pradesh—two of the most senior members of the BJP.

⁷³ Board, The Editorial. "Why the Rush to Criminalise Triple Talaq?" *Telegraph India*. September 24, 2018. Accessed May 10, 2019. <https://www.telegraphindia.com/opinion/many-birds/cid/1669911>.

For nearly a year prior to the executive order, the ordinance for criminalization was under consideration in Parliament, but faced strong opposition and gridlock in the upper house, Rajya Sabha, which prompted Modi's executive order. The ordinance has remained in Rajya Sabha, and experts doubt it will prevail, which means the criminalization of instant divorce could expire with Modi's executive order.

The obstacles that Modi is facing in overseeing the success of the ordinance for criminalization is perhaps a sign of hope for those who fear a parliament that is overwhelmingly in favor of excessive and unwelcome interference with personal law. However, because of Modi's commitment to achieving his personal goals and his history of ignoring legal restrictions, any Muslim who realizes that the legitimacy of a centralized cultural and religious institution is at risk of being compromised (if it has not been already) lives in constant fear. For Muslim women playing the game of *shatranj*, the victory over instant triple *talaq* may have meant the advancement of their queen, but the cost is their defense; for, now all that has not yet been sacrificed is vulnerable to the State and its patriarchy.

Conclusion

In this paper, I approached the discussion of current Indian government's involvement in Muslim personal law by providing social, political and historical context for which the most recent landmark Supreme Court decision was passed. In doing so, I also provided an analysis of the nuances in Muslim women's activism, the origins of the various groups and their approaches to activism in general, and with instant triple *talaq* specifically. Each of these factors lend themselves to two larger, more complicated issues. The first issue is what ultimately lies at the core of any of these debates and movements related to Muslim personal law and the State, and that is the relationship between the democratic State and its religious minorities. The second is concerned with the current gender politics within the broad Muslim community, mainly the Islamic institutions like the AIMPLB and the *ulema*. This is central to the question I had originally set out to answer in this research endeavor.

In the beginning, I briefly discussed some of the perils of being a Muslim living under a Hindu nationalist government: the rapes, the kidnappings, public flogging, innocent people being set on fire and murdered for suspicion of carrying beef, the challenges of renting an apartment or finding a job. Yet, the BJP was committed to "ensuring quality and dignity for Muslim women" as Amit Shah, President of the political party tweeted in December 2018.⁷⁴ Party leadership dedicated their efforts to embracing the savior role, just as the British

⁷⁴ Shah, Chowkidar Amit. "Congratulations to PM Modi Ji and the Entire Govt for Successfully Passing the Triple Talaq Bill in Lok Sabha. This Is a Historic Step Ensuring Equality and Dignity for the Muslim Women. Congress and Other Parties Must Apologise for Decades of Injustice towards Muslim Women." Twitter. December 27, 2018. https://twitter.com/AmitShah/status/1078291545244065793?ref_src=twsrc^tfw|twcamp^tweetembed|twterm^1078291545244065793&ref_url=https://timesofindia.indiatimes.com/india/congress-must-apologise-for-injustice-to-muslim-women-amit-shah-as-ls-pass-triple-talaq-bill/articleshow/67275770.cms.

colonial forces did in their civilizing mission, and often blamed the Congress Party, the previous majority, for “injustice towards Muslim women.” But every “savior” must face obstacles, so PM Modi made persistent efforts to highlight his struggle to “save” these Muslim women. In one Economic Times article he said, “Despite all hurdles and opposition from hardliners and opposition parties, the government is committed to making a law on triple *talaq*.”⁷⁵ Hopefully the parallels I’ve drawn between the BJP and the British Raj have made established significant clues as to why the same political party that is inciting such violence and further marginalizing Muslims in India would fight so hard to outlaw a practice that would greatly benefit Muslim women.

Just as the British cloaked their ulterior motives to gain control of the people of the subcontinent in their “civilizing” mission to “save” Indian women from Indian men, the BJP is feigning an attempt to “save” Muslim women from Muslim men for similar reasons. We’ve already witnessed a range of attempts to erase Muslim identity and history on a superficial level, by changing the names of cities like Allahabad and Faizabad, declaring monuments and structures built by Muslim rulers as foreign and treacherous to India’s Hindu roots. The widespread murders and rapes carried out by Hindu nationalists that have plagued Muslim populations in regions across the country, and have been politicized and justified as patriotic or religiously motivated. And even the economic and social disenfranchisement and discrimination as Muslims find it increasingly challenging to seek employment, purchase homes and rent apartments, or just live peacefully in areas with large Hindu populations.

⁷⁵ "Prime Minister Modi Ensured Triple Talaq Has No Place in Country: Amit Shah." The Economic Times. October 15, 2018. <https://economictimes.indiatimes.com/news/politics-and-nation/prime-minister-modi-ensured-triple-talaq-has-no-place-in-country-amit-shah/articleshow/66221273.cms>.

Given this context, it is reasonable for one to be suspicious of Prime Minister Modi's efforts to support Muslim women.

If it was not already clear, Modi's executive order to criminalize instant triple *talaq* despite considerable opposition displays a commitment to further oppressing this large minority and cripple its communities. Muslim feminists and activists from Mumbai to Lucknow argued that criminalizing a practice that is already considered void and meaningless, seems excessive. Furthermore, if the men attempting to instantly divorce their wives are thrown in jail, the financial burden to provide for themselves and their family will be yet again abruptly place on the wife. Then, there is the potential for women to fear reporting cases of instant triple *talaq* for fear that their inlaws or community members may attempt to seek vengeance in some way for their husband's imprisonment. Thus, this second piece of legislation does not actually do anything more than persuade Muslim women, especially those of lower socioeconomic status with less resources and agency, against reporting instant triple *talaq*.

Given the severity of the violence and discrimination Muslims have experienced, especially since the BJP became Parliament's ruling party, many are already concerned for the future plans of this government to use its moral agenda or women's empowerment scheme to further intervene in personal law and other aspects of Islamic tradition and culture. It appears that Muslim women's agency in the banning of instant triple *talaq* in 2017 opened the gateway for future State intervention in Muslim personal law. The undue criminalization of instant divorce proved to be the first instance of the anticipated overstepping of the State's previously stipulated boundaries.

Lastly, I believe it speaks volumes to the gravity of the abuse Muslim women have endured in India for decades at the hands of leaders and patriarchal institutions who use haphazard personal laws to perpetuate misogyny that these women would publicly seek support from a violent Hindu-nationalist regime. The women who are running and supporting groups like BMMA, AIMWPLB and Bazm-e-Khavateen are aware of the risks they are taking by inviting the State to interfere with Muslim personal law, they have not been blind to the cruelty of the BJP and the Hindu nationalist movement. However, they continued to urge Parliament to pass the historical legislation to outlaw instant triple *talaq*, while male-dominated groups like the *ulema* and the AIMPLB remained firm in their support of this practice which has already been deemed illegitimate and illegal in over twenty Muslim-majority countries. The dilemma of choosing between womanhood and religious, ethnic or indigenous identities is one that women around the world and throughout history have experienced one way or another. In this case, the Muslim Indian women referred to by some newspapers as “triple *talaq* crusaders” or simply just supporters of the 2017 Supreme Court decision, seem to have made a surprising choice in prioritizing womanhood over religious identity.

What is perhaps most significant, or telling of a major transition in gender politics, is Bazm-e-Khavateen’s commitment to supporting the 2017 Supreme Court decision 2017 legislation. This is an organization that has not only been committed to distancing itself from secular activism since its founding in 1934, but whose current leadership has been adamant about supporting the *ulema* and the AIMPLB. Director Shahnaz Sidrat has gone so far as to express a desire to be included in the AIMPLB as the organization’s women’s wing, yet her and her constituents were firm in their condemnation of instant triple *talaq* and welcoming to

the Supreme Court's decision. This type of ideological shift is indicative of a major rift along gendered lines within the large and diverse Muslim community of India. It tells us that there is an entire class of Muslim women may be considered conservative, but are thoroughly disappointed by if not splenetic towards the adjudicators of Muslim personal law and the male-dominated leadership of that is guilty of perpetuating the usage of such a contested and abusive custom.

Moving forward, this period will signify a shift in Indian political history as the government marches firmly in the direction of minimizing the space previously allotted by legislation from the colonial period (Shariat Application Act of 1937) for Muslims to conduct their affairs by both State laws and personal law for family matters. If the Supreme Court's decision on the Shayara Bano case was not enough to signify this, Modi's executive order represents a commitment to asserting dominance and power over the Muslims in the country by overtaking the authorities on Muslim personal law. Although a Uniform Civil Code (UCC) has been at the center of public discourse for generations, especially since the early 1980s when the Hindu nationalist movement really took off. Many Muslim activists and public figures including Flavia Agnes and leaders of Bazm-e-Khavateen, AIMPLB and AIMWPLB have stood against the UCC for fear of an overbearing bias towards Hinduism and Hindu personal laws. Thus, Modi and the Supreme Court's stances on instant triple *talaq* sound off an alarm for Muslims throughout India amongst various classes, regardless of whether or not they detested the evolution of triple *talaq* into an instantaneous practice, or even if they were even uninterested in or unaware of the issue.



Further Research

While this paper covered most of the factors contributing to the triple *talaq* controversy and multiple perspectives on the issue, there is certainly room to develop the research even further. Two issues that are most deserving of further research are the nuances in public opinion on instant triple *talaq* and State legislation that interferes with Muslim personal law as well as a comparison of Modi and the BJP's attitude towards the advancement of Hindu women's rights and protections as Hindu personal law comes into conflict with State law. Due to the time and resource restraints of this project, these two elements were scarcely discussed as they require either interviews with human subjects or in depth research into gender-based discrimination and recent women's activism within the Hindu community.

During the nine months I spent in Lucknow I developed relationships with Muslim women of various socioeconomic backgrounds—from those with generational wealth and relation to royalty in the region, to those of a middle class, yet secure, household and those who lived in the outskirts of the city in close-knit poor and underserved communities. At times we would sit in a cozy and safe-feeling corner of the home, whether it was a bungalow or a single room divided by curtains, and I would listen and learn from their stories, discuss their concerns and their hopes for the near future as well as future generations. What I began to notice is that lower class women seemed far more concerned for their safety and their future hardships as the Supreme Court decision sounded off an alarm for their communities that were already the most vulnerable to violence incited by Hindu nationalists. Meanwhile many middle class women—if they were at all interested—expressed more relief for the

decision, along with the upperclass. My hypothesis is that the priorities shift along class lines due to the fact that Hindu nationalism manifests differently along class lines with the lower classes experiencing violence on a more direct and regular basis, which causing Muslim women of this demographic to prioritize the exclusion of the BJP from their personal matters.

Lastly, this project does little to compare the State's response to Muslim and Hindu women's issues regarding rights and safety, and an in-depth research project on this topic could add great value to the scholarly discourse. In 2018 the Supreme Court decided against the banning of women from the Sabarimala Temple in Kerala. The justification for refusing women's admission into this temple is historically based in religious doctrine, yet the Prime Minister expressed a different attitude towards the issue than he did towards instant triple *talaq*, referring to the Hindu custom as a matter of "tradition" and the Muslim one of, "gender equality."⁷⁶ A further look into the government's treatment of Hindu women's activist groups and Hindu laws that are detrimental to women's wellbeing could facilitate a more comprehensive understanding of the State's relationship with religious minorities such as Muslims as well as provide a more extensive critique of the current regime's political strategies that use women's empowerment as an avenue for fulfilling ulterior motives.

⁷⁶ ANI | Updated: Jan 1, 2019. "Triple Talaq a Matter of Gender Equality, Sabarimala Is about Tradition: PM Modi | India News - Times of India." The Times of India. May 09, 2019. <https://timesofindia.indiatimes.com/india/triple-talaq-a-matter-of-gender-equality-sabarimala-is-about-tradition-pm-modi/articleshow/67337349.cms>.

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